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Arizona Corporation Commission

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DATE: April 21, 2017

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FROM: Commissioner Bob Burns' Office

SUBJECT: APS Rate Case, Docket No. E-01345A-16-0036/E-01345A-16-0123

Attached are court filings pertinent to this case for your reference.

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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

16 COMMISSIONER ROBERT BURNS, a
17 member of the Arizona Corporation
18 Commission, in his official capacity,

19 Plaintiff,

20 v.

21 ARIZONA PUBLIC SERVICE
22 COMPANY, an Arizona public service
23 corporation, and PINNACLE WEST
24 CAPITAL CORPORATION, an Arizona
25 corporation, and DONALD BRANDT, an
26 individual,

27 Defendants.

Case No. CV2017-001831

**EMERGENCY MOTION FOR SPEEDY
HEARING AND EXPEDITED RULING
ON DEFENDANTS' MOTION TO
DISMISS PER RULE 57,
ARIZ.R.CIV.P.**

(Honorable James Blomo)

28 Plaintiff, Arizona Corporation Commission Commissioner Robert Burns respectfully
asks the Court, pursuant to Rule 57, Ariz.R.Civ.P., to set an expedited hearing for oral
argument on the Defendant's Motion to Dismiss at the earliest date available on the Court's
calendar after the Defendants' Reply deadline of April 25, 2017, and to decide that motion on
an expedited basis. As the Court will note from Commissioner Burns' Response and
Objection to Motion to Dismiss ("Response") filed today, Commissioner Burns seeks
declaratory relief that he is empowered under the Arizona Constitution to individually issue

1 and to enforce two subpoenas he issued to compel production of documents and testimony
2 from the Defendants. The subpoenas seek information directly relevant to Commissioner
3 Burns' consideration of a substantial customer rate increase Defendant Arizona Public
4 Service Company seeks in a pending rate case application before the Arizona Corporation
5 Commission ("ACC") (the "APS Rate Case"). As explained in Commissioner Burns'
6 Complaint at paragraphs 7-94 and in his Response at pages 6 - 8, the information sought by
7 the subpoenas is critical to determining whether and how APS's rate hike requests are
8 influenced by spending APS's parent, Pinnacle West Capital Corporation, does to help APS
9 obtain political influence at the ACC. The information is also critical to determining if sitting
10 ACC commissioners who may have benefitted directly by millions of dollars potentially
11 poured into their ACC campaigns by the Defendants are disqualified under fundamental due
12 process standards from further participation in APS's rate case. [See Response, at 8-10]. Not
13 surprisingly, APS and Pinnacle West would rather the subpoena issues be kept in limbo until
14 their rate increase request has been decided.

15 Since Commissioner Burns issued the subpoenas in 2016, Defendants have taken
16 several actions to frustrate Commissioner Burns in obtaining the information he needs to
17 carry out his constitutional responsibilities in the APS rate case and in other proceedings.
18 They first sued in this court to stop the subpoenas (Case No. CV2016-014895) [see Response,
19 Exhs. "D" and "M"], but when Commissioner Burns prepared to answer and counterclaim
20 they withdrew their claims and forced Commissioner Burns to file this action. Now, through
21 their Motion to Dismiss, APS and Pinnacle West have reversed field and seek to keep the
22 subpoena matters at the agency before the very Commissioners whose disqualification may be
23 required. And, they have ramped up efforts to push their rate case through as quickly as
24 possible, entering a "settlement" agreement with a large number of other intervenors. [See
25 Response at Exh. "N"]. These attempts to thwart the subpoenas while ramming the rate case
26 to conclusion are paying off. This past Friday, a procedural order was issued in the APS Rate
27 Case, ordering the commencement of the evidentiary hearing on Monday, April 24, 2017. A
28 true and correct copy of the procedural order is attached as Exhibit A. It appears APS is

1 aiming to try and get a decision in the rate case closed by June or July of this year.

2 Absent an expedited consideration by this Court of the Motion to Dismiss, APS and
3 Pinnacle West will continue to press their rate "settlement" forward, and Commissioner Burns
4 will be nowhere nearer to the information he needs to protect Arizona consumers and address
5 the critical rate and commissioner disqualification issues. If the Motion to Dismiss is
6 resolved quickly, a favorable ruling for Commissioner Burns will allow him to inform the
7 other Commissioners, objecting intervenors in the APS rate case, and the consumers impacted
8 by the rate case that he is one step closer to obtaining the information he and the consumers
9 he protects need. It will give him ammunition for seeking to continue the rate decision until
10 the subpoena issues are resolved, and will allow him to seek further expedited consideration
11 of the merits of his claim which may ultimately resolve the Defendants' subpoena objections
12 and get the Commission, intervenors in the APS Rate Case, and Arizona utility customers the
13 information they need to address key rate and commissioner disqualification issues before
14 uninformed decisions are made.

15 There is no prejudice to the Defendants in moving expeditiously. If their motion is
16 granted, they will force matters back to the agency level where they claim to now feel most
17 comfortable. If they lose, they will simply have to take on issues of Commissioner Burns'
18 constitutional authority that they had asked this Court to resolve in their earlier lawsuit on an
19 expedited basis.¹ [See Response, at Exhs. "D" and "M" (filings by Defendants in the
20 withdrawn lawsuit seeking preliminary injunctive relief)].

21 The foregoing provides good cause for setting an expedited oral argument on the
22 Motion to Dismiss and deciding the issues therein on an expedited basis. Pursuant to Rule 57
23 Ariz.R.Civ.P., Plaintiff Commissioner Burns requests that this Court "order a speedy hearing
24 of a declaratory judgment action" pursuant to its authority under Rule 57, Ariz.R.Civ.P. and
25 expedite a ruling on Defendants' pending Motion to Dismiss.

26
27 ¹ Counsel undersigned sent counsel for the Defendants an e-mail earlier today inquiring about
28 the Defendants' willingness to stipulate to expedited proceedings on the Motion to Dismiss,
hoping to perhaps obtain a stipulation. That discussion is ongoing.

1 Finally, because the question of deciding the Motion to Dismiss expeditiously must
2 itself be decided promptly, Commissioner Burns respectfully requests the Court to issue to the
3 Defendants the Order to Show Cause submitted this day requiring them to respond with any
4 objections to this motion no later than this Friday, April 21, 2017.

5
6 DATED this 18th day of April, 2017.

7 BASKIN RICHARDS PLC

8
9 /s/ William A. Richards

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16 on this 18th day of April, 2017.

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15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

16 **IN AND FOR THE COUNTY OF MARICOPA**

17 COMMISSIONER ROBERT BURNS, a
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19 Commission, in his official capacity,

20 Plaintiff,

21 v.

22 ARIZONA PUBLIC SERVICE COMPANY,
23 an Arizona public service corporation, and
24 PINNACLE WEST CAPITAL
25 CORPORATION, an Arizona corporation, and
26 DONALD BRANDT, an individual,

27 Defendants.

Case No. CV2017-001831

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION TO DISMISS**

(Expedited Oral Argument Requested)

(Assigned to the Honorable James T.
Blomo)

28
Arizona Corporation Commission ("ACC") Commissioner Robert Burns asks the Court to exercise its authority under the Arizona Constitution and the Uniform Declaratory Judgments Act, A.R.S. § 12-1831, *et seq.*, to decide the powers the Arizona Constitution grants him to issue and enforce investigatory subpoenas as part of ACC ratemaking and rulemaking proceedings. [Complaint, at ¶¶'s 5-6, 109-116]. A ripe dispute exists between the parties over Commissioner Burns' constitutional and statutory authority to issue and enforce two subpoenas requiring records and testimony from the Defendants. [See Complaint at ¶¶'s 7-108 and Ex. 4]. And, Arizona precedent provides multiple independent reasons why the

1 discretionary doctrines of primary jurisdiction and exhaustion of remedies cannot apply, such
2 as: 1) the issues presented here fall squarely in the traditional jurisdiction of the courts to
3 interpret constitutional provisions, are not constitutionally delegated exclusively to the ACC,
4 and require no special agency expertise; 2) the issues presented are questions of Commissioner
5 Burns' constitutional jurisdiction; 3) the doctrines limit judicial appeals by parties to an agency
6 proceeding, not the relief requested by an elected member of the agency itself who has
7 individual governmental powers; 4) the administrative process here is, at best, permissive; 5)
8 there is no pending proceeding to exhaust; and 6) the administrative process would be futile.
9 Those doctrines are especially inapplicable because Defendants Arizona Public Service
10 Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West") previously
11 conceded the Court's power to decide these issues without awaiting any administrative ruling,
12 and have just recently reversed course hoping to delay disclosures harmful to APS before it
13 gets its latest round of substantial rate increases pushed through the ACC. The Court should
14 act quickly, just like APS originally said it could, and address Commissioner Burns' claims.

15 **I. Commissioner Burns Seeks a Ruling on the Broad Subpoena Powers Arizona's**
16 **Framers Individually Granted Him in the Arizona Constitution.**

17 Arizona's constitutional framers created the ACC as Arizona's fourth branch of state
18 government, and gave its elected members a unique combination of sovereign executive,
19 legislative and judicial powers. *See, e.g. Ariz. Const., art. XV, §§ 3-5, 13-14, 17, 19; State v.*
20 *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 305 (1914) ("The functions of the
21 Corporation Commission are not confined to any of the three departments named [legislative,
22 executive and judicial branches], but its duties and powers pervade them all . . ."); *see Ariz.*
23 *Corp. Comm'n v. Ariz. ex rel. Woods*, 171 Ariz. 286, 290-291 (1992) ("*Woods*"). The framers sought
24 to overcome the undue influence large corporations had wielded against consumer interests in
25 traditional legislative and judicial arrangements, and intended that the ACC commissioners
26 provide a uniquely protective form of governmental powers "primarily for the interest of the
27 consumer." *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 308, 138 P. at 786; *see also*
28 *Woods*, 171 Ariz. at 291, 830 P.2d at 811.

The framers focused the ACC's regulatory powers principally on preventing corruption

1 and consumer overreaching by “‘public service corporations,’ which include private utilities
2 [like APS] . . .” (citing John D. Leshy, *The Making of the Arizona Constitution*, 20
3 Ariz.St.L.J. 1, 88 (1988); Ariz.Const., art. XV. *Woods*, 171 Ariz. at 290-291. Commissioner
4 Burns’ elected position is therefore part of the intentional Arizona constitutional check on the
5 powers of monopoly utilities like APS.

6 The two principal constitutional powers the Arizona Constitution grants the ACC to
7 counter monopoly overreaching are: 1) the authority to set limited rates that companies like
8 APS can charge consumers; and 2) the authority to set rules and regulations governing the
9 behavior of the utility monopolies. Arizona Constitution at Article XV, § 3 provides:

10 *The corporation commission shall have full power to, and shall, prescribe just*
11 *and reasonable classifications to be used and just and reasonable rates and*
12 *charges to be made and collected, by public service corporations within the state*
13 *for service rendered therein, and make reasonable rules, regulations, and orders,*
14 *by which such corporations shall be governed in the transaction of business*
15 *within the state, . . . and make and enforce reasonable rules, regulations, and*
16 *orders for the convenience, comfort, and safety, and the preservation of the health,*
17 *of the employees and patrons of such corporations;*

18 (emphasis added); *see also Woods*, 171 Ariz. at 290-291.

19 Recognizing that the ACC commissioners would need full disclosure and transparency
20 into monopoly activities to fulfill their rate-setting and rulemaking powers, the Constitution
21 further expressly delegated the commissioners broad investigatory powers, including subpoena
22 and deposition powers. Ariz.Const., art. XV, § 4. The Constitution is clear that these powers
23 are delegated not just to the ACC, but also separately to each of the individual members like
24 Commissioner Burns. The Arizona Constitution states, at Article XV, § 4:

25 *The corporation commission, and the several members thereof, shall have power*
26 *to inspect and investigate the property, books, papers, business, methods, and*
27 *affairs of any corporation whose stock shall be offered for sale to the public and*
28 *of any public service corporation doing business within the state, and for the*
29 *purpose of the commission, and of the several members thereof, shall have the*
30 *power of a court of general jurisdiction to enforce the attendance of witnesses*
31 *and the production of evidence by subpoena, attachment, and punishment, which*
32 *said power shall extend throughout the state. Said commission shall have power to*
33 *take testimony under commission or deposition either within or without the state.*

(emphasis added); *see also* A.R.S. § 40-241 (“each commissioner” may conduct inspections of

1 corporate books or examinations under oath of corporate officials). The Arizona Supreme
2 Court has affirmed that this provision entitles Commissioner Burns not only to investigate the
3 records and operations of APS, but also of its affiliated companies like Pinnacle West. *Woods*,
4 171 Ariz. at 295. Thus, the questions Commissioner Burns raises in his Complaint about a
5 commissioner's power to issue and enforce an investigatory subpoena (*see* Complaint, at ¶¶s
6 109-116) implicate powers derived directly from the Arizona Constitution that must be
7 answered by interpreting the constitutional framers' intent.

8 **II. The Subpoenas at Issue Seek Evidence at the Heart of a Commissioner's** 9 **Constitutional Responsibilities.**

10 Commissioner Burns' investigatory powers are exceedingly broad.¹ Indeed:

11 . . . courts give the Commission "wide berth" when they review the validity of
12 Commission investigations. [citation omitted]. In fact, "an appropriately
13 empowered agency 'can investigate merely on suspicion that the law is being
14 violated, or even just because it wants assurance that it is not.'" [citations
15 omitted]. In other words, "the Commission must be free without undue
16 interference or delay to conduct an investigation which will adequately develop
17 a factual basis for a determination as to whether particular activities come within
the Commission's regulatory authority." *SEC v. Brigadoon Scotch Distrib. Co.*,
480 F.2d 1047, 1052-53 (2nd Cir. 1973). *See also EEOC v. Kloster Cruise Ltd.*,
939 F.2d 920, 922 (11th Cir. 1991) (court must enforce subpoena if agency
makes plausible assertion of jurisdiction and information sought is not plainly
incompetent or irrelevant to any lawful purpose of the agency).

18 *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 (App. 2000).² As set forth in
19 Commissioner Burns' detailed Complaint, he has multiple reasons to believe that the
20 subpoenas will help him adequately develop a factual basis for determining matters within the
21 ACC's oversight. [*See* Complaint, at ¶¶s 7-106]. The following summarizes some of them.

22 Commissioner Burns issued the two disputed subpoenas only after concerns
23 crescendoed during the 2014 ACC election that APS was attempting to use the financial might

24 ¹ The constant exposure to such deep scrutiny is the price APS and Pinnacle West pay for the
25 special economic benefits of being a state-sanctioned monopoly. *Woods*, 171 Ariz. at 290;
26 *Davis v. Corp. Comm'n*, 96 Ariz. 215, 218 (1964) ("The monopoly is tolerated only because it
is to be subject to vigilant and continuous regulation by the Corporation Commission, . . .")

27 ² Note that the reference in *Carrington* to courts "review[ing] the validity of Commission
28 investigations" is itself a tip-off that such matters are not consigned to agency review.

1 it earns off utility customers for undue political influence. That race saw some \$3.2 million
2 spent by “dark money” independent expenditure groups (“IEGs”) both to defeat candidates
3 widely viewed as disfavored by APS and to support candidates widely seen as APS-backed.
4 [See Exs. “A”, “B”; Ex. “C” at 4-8]³. The source of the “dark money” support, which dwarfed
5 the amount of campaign funds normally spent on ACC races, is generally suspected to be APS
6 or its parent, Pinnacle West. [See *id.*] Yet, when Commissioner Burns sought voluntary
7 disclosure by APS and Pinnacle West of their roles in the dark money contributions, they
8 refused. [See Ex. “D”, at Exs. 2-6].

9 The decision by a regulated monopoly and its parent to keep secret financial and other
10 efforts to orchestrate political victories for their favored candidates is troubling. As is the
11 companies’ refusal to disclose how they structure the ubiquitous “marketing” and “charitable”
12 spending that results in APS branding on public buildings and government or community
13 events. Commissioner Burns has heard the repeated cry of incredulous APS consumers
14 wondering why they are paying to have a regulated monopoly, who needs no marketing to gain
15 customers, spend so heavily on public events of no direct value to its consumers. He has heard
16 objections to forced political speech, complaining that APS and Pinnacle West increase
17 customer rates only to use millions in revenues to support political candidates the companies
18 favor, but which individual consumers may not.

19 The consumer concerns are well justified. After all, Pinnacle West publicly
20 acknowledges in securities filings that “[w]e derive essentially all of our revenues and earnings
21 from our wholly-owned subsidiary, APS.” [See Ex. “E” (excerpts of Pinnacle West 10-K) at
22 3]. So, even if, as APS contends, the political, charitable and marketing spending comes from
23 Pinnacle West’s income, Pinnacle West’s almost exclusive reliance on APS revenues means
24 its political spending depends on monies earned off APS customers. Also, Commissioner

25
26 ³ The numerous exhibits attached to and referenced in this Response do not convert the
27 motion to one for summary judgment because they were either matters appended to the
28 complaint, are matters of public record, or elaborate on matters alleged specifically in the
Complaint and that Defendants are already on notice of. See *Strategic Dev. & Constr., Inc. v.*
7th & Roosevelt Partners, LLC, 224 Ariz. 60, 64 (App. 2010).

1 Burns is motivated by his first-hand experience with APS effectively using the threat that it
2 will pull funding of government events to motivate another government official to express
3 support to Commissioner Burns on ACC business APS wished to influence.

4 Equally disconcerting, Pinnacle West has publicly announced that it received grand jury
5 subpoenas from the United States Attorney for the District of Arizona seeking “information
6 principally pertaining to the 2014 statewide general election races in Arizona for Secretary of
7 State and for positions on the ACC,” including “records involving certain Pinnacle West
8 officers and employees, including the Company’s Chief Executive Officer [Defendant Brandt],
9 as well as communications between Pinnacle West personnel and a former ACC
10 Commissioner.” [See Complaint at ¶ 81; Ex. “E”, at 27]. Finally, APS and Pinnacle West
11 recently announced that they will remain very active in political campaign spending, and that
12 in 2016 Pinnacle West spent over \$10 million to support political speech groups or influence
13 elections. [See Ex. “F” at 4-5]. While refusing to disclose any involvement in the “dark
14 money” spending of 2014, APS and Pinnacle West promise they will not relent in attempts to
15 influence ACC elections. The ongoing risk of APS financially “capturing” commissioners
16 poses a clear and present danger to APS utility consumers.

17 All the foregoing raise legitimate concerns that: 1) APS and Pinnacle West factor their
18 expected costs for political spending, “marketing” and lobbying into their ACC proposed rate
19 calculations; 2) APS and Pinnacle West’s investments in commissioners require commissioner
20 disqualifications in APS matters; 3) APS and Pinnacle West may have violated Arizona law
21 and coordinated “dark money” contributions to gain the allegiance of sitting commissioners; 4)
22 APS and Pinnacle West embrace efforts to financially “capture” commission seats that
23 Arizona consumers cannot effectively counter without effective mandatory transparency and
24 disclosure rules; and 5) APS may be hiding behind its “parent” to conceal unlawful or at least
25 publicly suspect efforts to unduly influence commissioners in their favor. These issues
26 squarely fall within the concerns that can and should be addressed by an ACC commissioner.

27 **A. Rate Making Issues.**

28 APS and Pinnacle West contend they do not make campaign expenditures, or politically

1 influential marketing or charitable contributions, from APS's funds, but only from Pinnacle
2 West's income. However, this accounting sleight of hand does not lessen the near certainty
3 that APS's rate requests to the ACC are intended and calculated to provide sufficient excess
4 ratepayer revenue to pay just such expenses. As noted above, the many millions Pinnacle
5 West apparently spends to support or oppose political candidates or causes, and to grease
6 wheels with government officials by supporting their local civic events, must come from APS
7 ratepayer payments – the nearly exclusive source of all income to Pinnacle West.

8 Moreover, Pinnacle West regularly publishes financial performance expectations
9 concerning dividends, earnings and even return on equity for its shareholders, prospective
10 shareholders, potential business partners and potential financing sources.⁴ Pinnacle West even
11 provides prospective investors details of its ACC rate hike requests, and in a recent forecast
12 discussing the current APS rate-setting case, Pinnacle West announced its “indicated annual
13 dividend is \$2.62 per share; targeting ~ 5% annual dividend growth.” [*Id.* at 8-17; 20].

14 Anticipated dividends, net earnings and returns are logically determined only *after*
15 Pinnacle West subtracts its anticipated corporate expenses. To forecast dividends, earnings,
16 growth or ROE figures, Pinnacle West must first know what it expects to spend in future
17 periods, including on political contributions, marketing for APS, charitable contributions, or
18 lobbying. If the resulting post-expense net profits are not enough to meet target goals like its
19 published 5% annual dividend growth rate, Pinnacle West must either adjust its expense plans
20 or seek higher net returns on its exclusive source of income – APS revenues. Given that
21 Pinnacle West has so regularly engaged in substantial “marketing” spending and indicates it
22 will continue to pump millions into election cycles, Pinnacle West shows no sign of adjusting
23 expenses. It must therefore ensure that the ratepayer income it is generating is sufficient to

24
25 ⁴ Pinnacle West frequently issues “forward-looking statements based on current expectations,
26 including statements regarding our earnings guidance and financial outlook and goals.” [*See*
27 Ex. “G”, at 2]. In promoting itself to investors Pinnacle West touts “[a]nnual dividend growth
28 targets” and its consolidated “return on equity” or ROE figure. [*Id.* at 3]. The ROE helps
describe how Pinnacle West balances profitability, asset management and financial leverage so
investors can assess whether they will receive a desired return on their investment.

1 cover such expenses and still meet its publicized dividend, earnings and ROE targets.

2 Pinnacle West can make sure such expenses are covered with sufficient profits to spare
3 by making adjustments to items like the “rate of return” it bakes into its ACC rate requests for
4 APS. [See Ex. “G”, at 11]; see *Arizona Corp. Comm’n v. Arizona Pub. Serv. Co.*, 113 Ariz.
5 368, 370 (1976) (“The company is entitled to a reasonable return . . .”) There can be little
6 doubt that Pinnacle West and APS ensure that APS’s rate requests, especially its “rate of
7 return” requests, are set to guarantee Pinnacle West will both have all the monies it plans to
8 use for political campaign spending and influence peddling, with more than enough left over to
9 meet its published financial targets. Thus, APS must logically build its rate requests using
10 planned political speech expense data. This means that the financial and budgeting records
11 and operational details Commissioner Burns seeks through his subpoenas will likely show that
12 APS is asking the ACC to approve consumer rate increases designed to reimburse (directly or
13 indirectly) political expenses even though ratepayers might find such expenditures offensive,
14 wasteful or unduly expensive. Proof from APS and Pinnacle West that they are seeking to
15 ensure coverage of such expenses would demonstrate they are violating ACC policy and
16 justify downward adjustments of APS’s rate requests. APS understandably wants to avoid the
17 downside that comes with disclosure, but the subpoenas seek evidence critical to
18 Commissioner Burns’ advocating for appropriate rates and protecting consumers paying them.

19 **B. Commissioner Disqualification Issues.**

20 In deciding an APS rate case, the ACC Commissioners exercise, in part, their judicial
21 function. *State ex rel. Corbin v. Arizona Corp. Comm’n*, 143 Ariz. 219, 226 (App. 1984) (“[I]n
22 a rate-making proceeding the process by which the Commission gathers evidence through
23 evidentiary hearings and reaches its ultimate decision is quasi-judicial in nature.”). As
24 recognized by the U.S. Supreme Court, when elected adjudicatory officers have received a
25 highly disproportionate share of their campaign support from a party appearing before them,
26 fundamental due process policies may disqualify them from participating in the proceeding.
27 *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009). Here, the campaign support
28 clandestinely given to Commissioners Forese and Little in 2014, and the enormous spending

1 Pinnacle West openly used its APS revenues for in support of Commissioners Tobin and Dunn
2 in the 2016 election raise substantial disqualification issues under the *Caperton* standard.

3 After all, current Commissioners Forese and Little were reportedly the beneficiaries of
4 some \$3.2 million in “dark money” IEG spending in 2014 while their own campaign
5 committees spent, according to state records, just \$269,550.00 and \$260,573.32 respectively.
6 [See Ex. “C” at 4-6; Exs. “H” and “I”]. The campaign expenditure reports of the Arizona
7 Secretary of State credit Commissioner Forese with \$492,637.00 in direct, supportive IEG
8 expenditures, and Commissioner Little with \$494,138.00, almost *double* the amounts their
9 own campaign committees expended. [See *id.*] If that money came from Pinnacle West/APS,
10 the over 180% increase in campaign support could trigger disqualification of Commissioners
11 Forese and Little from the APS rate case and other proceedings impacting APS under
12 *Caperton*. See *Caperton*, 556 U.S. at 873-890 (requiring disqualification when party’s
13 contributions in support of judicial candidate’s election campaign was 3 times the candidate’s
14 own committee expenditures.) The connection of Commissioners Forese and Little to the dark
15 money already motivated a motion to disqualify those commissioners in an earlier APS rate
16 request case which APS withdrew after the motion was filed. [See Exs. “C” and “J”, at 11].

17 Moreover, while Pinnacle West lavishly spent APS-generated money in support of
18 Commissioners Tobin and Dunn in the 2016 campaign in a very public display [see Ex. “F”, at
19 5-6; Ex. “K” at 1-2], the total of around \$4 million it apparently contributed to help get them
20 elected helped boost their IEG support to 25 times their own campaign committee spending for
21 Commissioner Tobin and over 11 times for Commissioner Dunn. [See Ex. “K”, at 1-2; Exs.
22 “Q” and “R”]. This publicly disclosed spending could equally justify disqualification under
23 *Caperton*, particularly if the investigation reveals any evidence of even indirect coordination
24 between APS/Pinnacle West operatives and their campaigns.⁵

25
26 ⁵ In a political chess move proving just how sophisticated the APS/Pinnacle West machine is,
27 Pinnacle West threw Commissioner Burns onto its misleading “Arizona’s Sustainable Solar
28 Team” ads in 2016 along with Commissioners Tobin and Dunn. [See Ex. “K”, at 2]. This was
done without Commissioner Burns’ approval or agreement, and as an “independent
expenditure” he could not stop it. Likely hoping to spark negative voter suspicions of

1 The documents and testimony required by the contested subpoenas will disclose
2 whether APS or Pinnacle West agents engaged in any direct or indirect coordination with other
3 commissioners' campaigns, which could violate Arizona's election laws, particularly for Clean
4 Elections candidates. *See* A.R.S. §§ 16-922 (independent and coordinated expenditures); 16-
5 941 – 16-943. And, it will allow Commissioner Burns to exercise his constitutional duty to
6 protect Arizona consumers and determine whether evidence mandating disqualification of any
7 other commissioners exists before they vote on APS's rate request.

8 **C. Investigation and Development of New Transparency and Disclosure Rules.**

9 If APS has used its relationship with Pinnacle West to mask political contributions
10 funded from the wallets of APS customers, that scandal alone mandates implementation of
11 new, robust transparency and disclosure ("T&D") rules to prevent such clandestine behavior
12 and keep commissioner candidates honest, independent and accountable to the consumers the
13 Arizona Constitution protects. Commissioner Burns has launched just such an investigatory
14 rulemaking proceeding (the "T&D Docket"). [*See* Complaint at ¶¶'s 100-106; Ex. "L"
15 hereto]. Investigating the need for, and the most effective designs for such rules fits precisely
16 within his express powers under Ariz.Const., art XV, § 3 to make "reasonable rules,
17 regulations, and orders, by which [public service] corporations shall be governed in the
18 transaction of business within the state". It also follows the nationwide "modern trend in
19 administrative law and procedure to open regulatory process as broadly as possible to public
20 input" so that fully educated consumers can help combat the evils of "regulatory capture" by
21 well-heeled regulated entities or special interests. *New Cingular Wireless PCS, LLC v. Pub.*
22 *Utils. Com.*, 246 Cal. App. 4th 784, 805 n.20, 201 Cal. Rptr. 3d 652, 669 (2016) (citing
23 Schwarcz, *Preventing Capture Through Consumer Empowerment Programs: Some Evidence*
24 *from Insurance Regulation*, in *Preventing Regulatory Capture, Special Interest Influence and*
25 *How to Limit It* (Carpenter & Moss edits., 2014) at p. 369). Commissioner Burns has
26 hypocrisy given Commissioner Burns' ongoing public dispute with APS/Pinnacle West,
27 APS/Pinnacle West knew that if their open support did not negatively impact Commissioner
28 Burns, the advertising would at least help ensure he was a minority of one on the Commission.
Given those facts, Commissioner Burns would not be disqualified from addressing APS issues.

1 appropriately dually issued the disputed subpoenas in the rulemaking docket [*see* Complaint,
2 at ¶¶'s 100-101], and they will provide key, relevant evidence for those purposes, as well.

3 **III. APS's and Pinnacle West's Reversal of Position Seeks to Delay Disclosure That**
4 **Might Upend Expedited Approval of their Rate Request.**

5 A few months ago, APS and Pinnacle West acknowledged the Court's powers to
6 resolve the questions Commissioner Burns raises here without further administrative
7 proceedings. They asked this Court to decide Commissioner Burns' powers and stop
8 enforcement of the same subpoenas in Maricopa County Superior Court Case No. CV2016-
9 014895 (the "APS Lawsuit"). [*See* Ex. "D" at 2, lns. 12-3 and ¶¶'s 4, 5, 49-56, 58-66, 68 - 71;
10 Ex. "M" at 1-2]. But APS filed that challenge when it still risked having its majority support
11 on the ACC eroded in the fall, 2016 elections. After Pinnacle West spent millions in campaign
12 support, the election went APS's way, encouraging Defendants to withdraw their action, and
13 now argue instead that the Court must instead leave the issue to the very ACC commissioners
14 whose disqualification may be required if the subpoenaed information is provided.

15 APS's reversal also coincides with its recent moves to quickly conclude its pending
16 request to the ACC for substantial rate increases. APS moved expeditiously to secure a
17 "settlement" among a large number of the participants in its rate case, the hearing procedures
18 in the rate case are now engaged, and a real possibility exists that APS will try to obtain ACC
19 commissioner approval of their rate increase within the next two to three months. [*See* Exs.
20 "N" and "O"; Ex. "P", at 8; *see also* Emergency Motion for Speedy Hearing filed herewith].
21 This perhaps best explains their switch from advocating a judicial solution to now promoting
22 an administrative process that has not moved an inch on a motion to quash they filed on
23 September 9, 2017. The Defendants' goal to avoid disclosures that may justify deeper
24 investigation of APS's financial and rate-calculating practices, or raise material questions of
25 commissioner disqualification, before APS's rate hikes passed is best served by avoiding this
26 Court's intervention. However, Commissioner Burns and the public interests he serves have
27 substantial reasons to ensure subpoena compliance before APS's rate case is concluded

28 **IV. The Doctrines Defendants Rely On Are Not Applicable for Multiple Reasons.**

Defendants argue that the doctrines of primary jurisdiction and exhaustion of remedies

1 preclude judicial review. However, those are doctrines of discretionary judicial administration
2 that may not be applied summarily. *See, e.g., Campbell v. Chatwin*, 102 Ariz. 251, 257 (1967)
3 (describing exhaustion doctrine as a rule of judicial administration subject to numerous
4 exceptions).⁶ The doctrines can be applied only when their unique purposes are met, and are
5 subject to many independent exceptions, several of which apply here. *See, e.g., Farmers Inv.*
6 *Co.*, 136 Ariz. at 373 (holding that “[t]he exhaustion doctrine must be applied in each case
7 with an ‘understanding of its purposes and of the particular administrative scheme involved.’”)

8 For example, the Arizona courts hold that the exhaustion and primary jurisdiction
9 doctrines should not be applied when the question presented is one with which the courts
10 routinely deal and special agency expertise is not needed. *See Campbell*, 102 Ariz. at 257
11 (holding exhaustion not applicable to cases “in which the agency’s expertise is unnecessary.”);
12 *Farmers Ins. Co.*, 136 Ariz. at 373 (same); *Coconino Cty.*, 214 Ariz. at 87-88 (declining to
13 apply primary jurisdiction doctrine where questions were commonly decided by courts and did
14 not require special agency expertise); *Mountain States*, 120 Ariz. at 431-32 (same). Nor do
15 they apply “where jurisdiction of the agency is being contested,” where the agency proceeding
16 is merely permissive, not mandatory, where the administrative process could be futile to the
17 plaintiff, or “where irreparable harm will be caused to the party by requiring the exhaustion of
18 the administrative remedies.” *Campbell*, 102 Ariz. at 257; *see Univar*, 122 Ariz. at 224 (same);
19 *Farmers Ins. Co.*, 136 Ariz. at 373 (same); *Coconino Cty.*, 214 Ariz. at 86. Every one of these
20 exceptions applies to Commissioner Burns’ claims.

21 **A. Commissioner Burns Seeks Interpretation of his Constitutional Authority,**
22 **Which is a Common Court Function Requiring No Agency Expertise.**

23 The “doctrine of primary jurisdiction is a discretionary rule created by the courts to

24 ⁶ *See also Univar Corp. v. City of Phoenix*, 122 Ariz. 220, 224 (1979) (recognizing multiple
25 situations where exhaustion doctrine does not apply); *Coconino Cnty. v. Antco, Inc.*, 214 Ariz.
26 82, 90 n.4 (App. 2006) (describing “primary jurisdiction, a *discretionary* doctrine”) (emphasis in original); *Farmers Ins. Co. v. Arizona State Land Dep’t.*, 136 Ariz. 369, 373
27 (App. 1982)(detailing exhaustion exceptions); *Campbell v. Mountain States Tel. & Tel. Co.*,
28 120 Ariz. 426, 431 (App. 1978) (“*Mountain States*”) (“[W]e decline to apply the discretionary
doctrine of primary jurisdiction so as to vest *exclusive* primary jurisdiction in the Corporation
Commission.”); *see also Wonders v. Pima Cty.*, 207 Ariz. 576, 578 (App. 2004) (same).

1 effectuate the efficient handling of cases in specialized areas where agency expertise may be
2 useful.” *Wonders*, 207 Ariz. at 578 (quoting *Mountain States*, 120 Ariz. at 430). Similar
3 deference for special agency expertise justifies the exhaustion doctrine. *See, e.g., Campbell*,
4 102 Ariz. at 257 (rejecting exhaustion of remedies doctrine “where the agency’s expertise is
5 unnecessary.”) Thus, the doctrines are designed to minimize judicial interference in questions
6 specifically delegated by the legislature to determination through an agency holding special
7 expertise, *see, e.g., Original Apartment Movers, Inc.*, 179 Ariz. at 422, and where the
8 questions presented raise “issues of fact not within the conventional experience of judges or
9 cases requiring the exercise of administrative discretion”, *Mountain States*, 120 Ariz. at 430.

10 However, where the questions presented fall within the conventional responsibilities of
11 the courts or involve the types of issues judges commonly resolve, ceding primary jurisdiction
12 to an agency or forcing a party to subject their claims to agency resolution is not appropriate.
13 *See, Campbell*, 102 Ariz. at 257; *Univar*, 122 Ariz. at 224; *Mountain States*, 120 Ariz. at 431-
14 32; *Wonders*, 207 Ariz. at 578. *Mountain States* provides an apt example for this case. There,
15 the court considered whether an individual phone service customer’s tort and contract claims
16 against a phone service provider should be dismissed as within the primary jurisdiction of the
17 ACC and subject to a “detailed investigation and hearing process within the Commission” that
18 the Arizona Legislature established under A.R.S. § 40-321, *et seq.* to address customer
19 complaints with adequacy of phone service. 120 Ariz. at 428. While the court acknowledged
20 that “it is undeniable that [the plaintiff’s] claims do involve the adequacy and method of
21 telephone service and that such issues are within the Commission’s jurisdiction under A.R.S. §
22 40-203 and § 40-321(A),” it found “these issues are not predominant.” *Id.* at 431-32. Rather,
23 the plaintiff’s complaint “deal[t] with much more than the mere manner and means of
24 providing telephone service.” *Id.* at 432. Instead, the “case involve[d] relatively simple tort
25 and contract issues revolving around a central inquiry: whether, under traditional judicial
26 principles, [the utility defendants] committed a civil wrong against appellant.” *Id.* Thus, “the
27 claims’ most important aspects involve facts and theories of tort and contract far afield of the
28 Commission’s area of expertise and statutory responsibility” and which were “the type of

1 traditional claims with which our trial courts of general jurisdiction are most familiar and
2 capable of dealing.” *Id.* There was no need to employ the primary jurisdiction doctrine. *Id.*

3 The predominant questions surrounding Commissioner Burns’ constitutional authority
4 to issue and enforce the subpoenas involve interpretation of the state constitution provisions at
5 Article XV, Sections 3 and 4. And, just as in *Mountain States*, deciding such questions is
6 squarely within the traditional role and expertise of the courts, not the ACC. Moreover, the
7 Legislature has enacted no statute granting the ACC exclusive jurisdiction to determine the
8 scope of each Commissioner’s individual constitutional powers. So, the most important
9 aspects of Commissioner Burns’ claims raise “the type of traditional claims with which our
10 trial courts of general jurisdiction are most familiar and capable of dealing.” *Mountain States*,
11 120 Ariz. at 432. Deferral to agency jurisdiction or expertise is inappropriate and unnecessary.

12 **B. The Dispute Commissioner Burns’ Raises Over His Jurisdiction Can Never**
13 **Be Subject to the Primary Jurisdiction or Exhaustion Doctrines.**

14 When the question at hand is whether a government official has jurisdiction or authority
15 to take a particular act, neither the primary jurisdiction nor the exhaustion of remedies
16 doctrines preclude immediate judicial review. *See Trico Elec. Coop. v. Ralston*, 67 Ariz. 358,
17 363 (1948) (holding that a question of the ACC’s jurisdiction to take certain actions was a
18 matter for the courts and not subject to the exclusive jurisdiction of the ACC); *Coconino*
19 *Cnty.*, 214 Ariz. at 86 (exhaustion of remedies does not apply where agency jurisdiction is in
20 issue); *Murphy v. Bd. of Med. Exam’r of State of Ariz.*, 190 Ariz. 441, 448 (App.
21 1997) (superior court properly determined jurisdictional bounds of agency even though agency
22 had not issued a final decision within definition of A.R.S. § 12-901(2)); *see also, Moulton v.*
23 *Napolitano*, 205 Ariz. 506, 512-13 (App. 2003) (doctrine of exhaustion of administrative
24 remedies not applicable where subject matter jurisdiction of agency was contested).

25 Here, APS and Pinnacle West have defied Commissioner Burns’ subpoenas in large
26 part, contesting that he has no authority to require the withheld information and to compel the
27 deposition of their executive. [See Complaint at ¶¶ 96-98, 109, and Ex. 4]. Commissioner
28 Burns disagrees, and asks the Court to decide the jurisdictional question. This is the classic
type of jurisdictional contest excluded from the primary jurisdiction and exhaustion doctrines.

1 **C. The Doctrines of Primary Jurisdiction and Exhaustion Do Not Apply to the**
2 **Agency’s Request for a Ruling on its Own Powers.**

3 The procedural doctrines Defendants invoke apply only to parties to an administrative
4 proceeding, not to the agency and its decisionmakers. Nor do the administrative proceeding
5 rules Defendants invoke apply to a sitting commissioner. For example, the Defendants rely on
6 A.R.S. § 40-253 which provides that “[a]fter any final order or decision is made *by the*
7 *commission*, any *party to the action or proceeding* or the attorney general on behalf of the
8 state may apply for a rehearing” (emphasis added). The statute delineates between the
9 commission as the decision-making body and the “party” who must apply for a rehearing. The
10 ACC’s administrative rules define who constitutes “Parties” in ACC proceedings, and they do
11 not include the commissioners. *See* Ariz. Admin. Code R14-3-103. More, the ACC rule
12 allowing a witness or person subpoenaed to file a motion to quash with the ACC creates a
13 relief option for subpoenaed parties – it does not tie the commissioners to that process or
14 restrict them in any way from seeking judicial declarations of their constitutional subpoena
15 rights. *See* Ariz. Admin. Code R14-3-109(O). The administrative “remedies” are simply not
16 designed for or limiting upon the Commissioner who is really an extension of the agency.

17 **D. The Administrative Process Defendants Invoke is, at Best, Permissive Only.**

18 The exhaustion doctrine also never applies where the administrative process invoked is
19 merely permissive or elective and not mandatory. *See, e.g., Bentivegna v. Powers Steel &*
20 *Wire Products, Inc.*, 206 Ariz. 581, 585 (App. 2003); Stated another way, a request for
21 judicial review is not barred for failure to exhaust administrative remedies “unless . . . recourse
22 to that remedy is *required* by statute or agency rule.” *Bonnichsen v. United States, Dep’t. of*
23 *the Army*, 969 F.Supp. 614, 623 (D.Or. 1997) (emphasis added). As noted above, nothing in
24 the ACC statutes or rules prevent Commissioner Burns from seeking a declaration of his
25 constitutional subpoena and investigatory powers. Administrative exhaustion is not required.

26 **E. Defendants’ Motions to Quash Have Been Denied; Waiting is Futile.**

27 “The exhaustion doctrine is concerned with the timing of judicial review of
28 administrative action.” *Wonders*, 207 Ariz. at 578 (quoting *Mountain States*, 120 Ariz. at
429). Where the issue posed to the Court is not a challenge to a still-pending administrative

1 proceeding, the exhaustion doctrine does not apply. *See id.*; *see also Bonnichsen*, 969 F.Supp.
2 at 623 (noting that for exhaustion rule to apply, there must exist “a remedy to exhaust.”) Nor
3 is exhaustion required where there was no administrative proceeding pending when the
4 plaintiff’s complaint was filed. *See Coconino Cnty.*, 214 Ariz. at 86. That is the case here.

5 APS fails to disclose that its motions to quash in the APS rate case have already been
6 denied under the ACC procedural order for that case which provides that if a motion is not
7 decided within twenty (20) calendar days of filing, it is deemed denied. [See Ex. “P”, at 10,
8 lns. 20-22]. That order had already worked a denial of APS’s original motion to quash filed
9 with the ACC on September 9, 2016. The second motion to quash Defendants filed with the
10 ACC on March 10, 2017 [Motion to Dismiss, Exh. “1”], has also not been acted upon, and
11 therefore was denied by operation of the procedural order in the pending rate case by March
12 30, 2017, the same day Defendants filed their Motion to Dismiss. Thus, as to the subpoenas
13 issued in the rate case, there is no administrative proceeding left to exhaust.

14 Also, even a party to a mandatory administrative proceeding need not continue that
15 proceeding if it would be futile or harmful. *Coconino Cnty.*, 214 Ariz. at 86. The remaining
16 commissioners allowed both of Defendants’ motions to quash to be denied administratively by
17 inaction. Commissioner Burns cannot change that. He is but one vote among five, and has
18 faced recent attempts to block him from even putting matters on the ACC agenda. Waiting on
19 something to happen at the agency is futile and prejudicial.

20 **V. The Administrative Procedures Act Does Not Preclude a Court Decision.**

21 Defendants also argue that Commissioner Burns was unauthorized to issue a subpoena
22 in the T&D Docket because the Arizona Administrative Procedures Act (“APA”) at A.R.S. §
23 41-1023(A) allows only for voluntary disclosure of information in a rulemaking proceeding.
24 [Motion to Dismiss at 5:3-12.] Not only would such a rigid rule violate the law recognizing
25 incredibly broad and flexible rulemaking and discovery powers in the ACC commissioners⁷,

26 ⁷ The Arizona courts caution against “imparting an unintended rigidity to the administrative
27 process” of rulemaking at the ACC and thereby rendering the ACC “inflexible” and incapable
28 of dealing with many of the complex and specialized problems arising within its constitutional
authority. *Ariz. Corp. Comm’n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 128 (1975).

1 the Defendants' argument ignores the superiority of state constitutional provisions to statutes.

2 "[P]ower vested in the Commission by the Constitution cannot be limited by statute."
3 *Ariz. Corp. Comm'n v. Superior Court*, 105 Ariz. 56, 62 (1969); *see* Ariz.Const., art. XV, § 6
4 (legislature is empowered to enlarge, but not decrease, ACC's powers); *Mountain States*, 120
5 Ariz. at 431. And the Constitution expressly authorizes individual commissioner subpoenas in
6 support of rulemaking proceedings. After all, Ariz.Const., art. XV, § 4 grants each member of
7 the commission "the power of a court of general jurisdiction to enforce the attendance of
8 witnesses and the production of evidence by subpoena" for the enumerated purposes of the
9 ACC. The purposes constitutionally enumerated at Article XV, § 3 to which those subpoena
10 powers refer expressly include: 1) "mak[ing] reasonable rules, regulations, and orders, by
11 which such [public service] corporations shall be governed in the transaction of business"; and
12 2) "mak[ing] and enforce[ing] reasonable rules, regulations, and orders for the convenience,
13 comfort, and safety, and the preservation of the health, of the . . . patrons of such corporations.
14 Neither the constitutional provisions, nor the corollary statute authorizing investigations of
15 Defendants' records (A.R.S. § 40-241), express any limitations on the subpoena power just
16 because the investigation supports rulemaking. And the constitutionally intended breadth of
17 commissioner investigatory and rulemaking powers, *see Carrington*, 199 Ariz. at 305
18 (investigatory powers); *Palm Springs Util. Co.*, 24 Ariz. App. at 128 (rulemaking powers),
19 confirm that the powers to compel testimony and records expressed in Ariz.Const., art. XV, §
20 4 are inconsistent with and supersede any statute that might limit rulemaking investigations to
21 toothless voluntary productions. The APA is irrelevant.

22 VI. Conclusion

23 None of the bars the Defendants propose applies to the straightforward declaratory
24 judgment claim seeking determination of Commissioner Burns' constitutional authority to
25 issue and enforce the subpoenas. The Court must deny the motion to dismiss and move this
26 case forward as expeditiously as possible.

27 ...

28 ...

1 DATED this 18th day of April, 2017.

2
3 BASKIN RICHARDS PLC

4
5 /s/ William A. Richards

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11 ORIGINAL of the foregoing e-filed
12 on this 18th day of April, 2017.

13 COPY of the foregoing served via
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EXHIBIT A

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Dark Money Drama Is Playing Out At The Arizona Corporation Commission Ahead Of Primary

By [Will Stone](#)

Published: Thursday, August 25, 2016 - 6:26am

Updated: Thursday, August 25, 2016 - 10:06am

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Arizona Corporation
Commission

This year's race for Arizona's public utilities commission might as well be called the "dark money drama."

Controversy has rocked the commission, much of it centered on the influence of outside actors like the state's utilities and the rooftop solar industry. There are seven candidates running for three seats this year—two are Democrats—so there will only be one primary.

"This cloud has been hanging over this commission," Commissioner Bob Burns said at recent [Arizona PBS debate](#). "It all starts with \$3.2 million perceived to have been spent by a regulated utility to get people on the commission."

Arizona Public Service (APS) is widely believed to have made so-called "dark money" contributions to support the 2014 campaigns of Commissioners Tom Forese and Doug Little. It's become the central question of this campaign season, and the cause célèbre of Burns, who is running for re-election.

As a commissioner, Burns has repeatedly asked APS and its parent company Pinnacle West to disclose its political spending. So far the company's CEO has refused. Now Burns plans to subpoena them.

So where do the four other candidates in the GOP primary stand on this issue?

"You can call it dark money or you can call it free speech," State Representative Rick Gray said at that debate, citing the Citizens United Supreme Court decision on corporate spending.

"If a company has private profits, it is up to them as far as I'm concerned where to spend it," he said.

He said a company should not have to disclose that information, either. Gray is not alone in his convictions. Former state senator and ally Al Melvin has said the same and criticized Burns for insinuating that two current commissioners are in the pocket of APS.

"I think we do have regulatory capture, but it's the solar industry and him (Burns)," Melvin said.

Indeed, the group Save Our AZ Solar, which received money from a Solar City-backed group, has openly supported Burns with robocalls and ads, saying "Burns is working to protect Arizona families against big electric companies and special interests."

In response, Burns has said he'd prefer the solar industry stay out of the election but ultimately, because these are independent expenditures, he has no control.

Current commissioner Andy Tobin is the third member of the Melvin-Gray-Tobin team. Tobin, the former speaker of the state house, was appointed this year. He and other commissioners recently suspended Burns' APS probe, saying the attorney chosen had questionable ties to the solar industry.

"Go file your subpoena, Bob. I've said that ten times, go file it," Tobin said during the August meeting. "I'm not stopping you."

Tobin also posed this question to Burns: "I'm trying to figure out— is it just because Pinnacle West isn't reporting? Or (Burns) doesn't want the money spent?"

Tobin has repeatedly lamented that this issue has "owned" the campaign conversation.

Burns has asked all regulated utilities to voluntarily refrain from spending in elections. APS has refused to do that.

The final candidate— former Superior Court Judge Boyd Dunn— also does not believe APS should have to disclose, although he is less outspoken than the other candidates.

"These allegations are being made before the dais, on the dais, between the members and things of that sort, without any basis whatsoever other than the principle itself," Dunn said.

The Corporation Commission's powers are extensive and unique. It's a quasi-judicial agency responsible for everything from your water and power bills, to securities, to the future of renewable energy in Arizona.

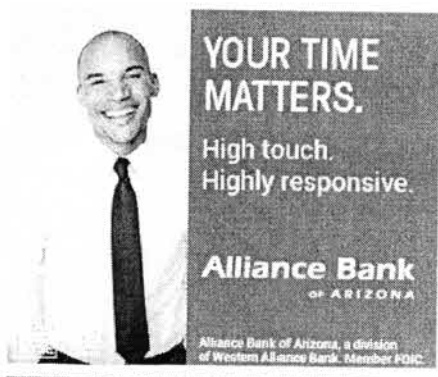
As scandal has plagued the commission, like resignations over conflicts of interest, fight over rooftop solar and even an FBI probe into the last election, the GOP primary has become a kind of litmus test: how will these candidates restore the public's trust?

It's also drawn fault lines in the conservative ranks as evidenced in a recent exchange between Melvin and Burns during this month's debate.

"We've got two Democrats running for these three seats who really like what they are hearing from Bob. It's like a three man team against the four of us," Melvin said.

To which former state Senate President Burns replied: "Here's the A-team. APS team. These guys are on APS' side."

The top three candidates in Tuesday's Primary will advance to the general election where voters will decide who they want on their team.



All Things Considered

Tuesday at 3 p.m.



EXHIBIT B

APS goes to court against Arizona Corporation Commission in dark money campaign spending fight

BY: Associated Press

POSTED: 8:42 PM, Sep 9, 2016

TAG: state

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PHOENIX - Arizona Public Service went to court Friday to push back against a subpoena demanding it produce records disclosing any spending in the 2014 Corporation Commission election that saw deep involvement by dark money groups.

The utility took two actions late Friday to block the effort by Arizona Corporation Commissioner Bob Burns to untangle how Arizona Public Service might have influenced the election.

APS and its parent company, Pinnacle West Capital Corp., asked a judge to declare the subpoenas invalid, warning that it's willing to go to the U.S. Supreme Court if necessary. It also asked the Arizona Corporation Commission to quash the subpoenas.

In its court filing, the utility cited the landmark Citizens United ruling at the U.S. Supreme Court in 2010 that opened the door to unlimited political spending by outside organizations.

The utility has been the subject of ongoing speculation that it spent \$3.2 million backing the 2014 elections of two commissioners. The company won't confirm or deny that it contributed to groups backing the candidates.

"These subpoenas are unlawful, not related to the stated purpose, and are an inappropriate use of subpoena power," said Barbara Lockwood, vice president of regulation for APS.

The spending in the 2014 election focused heavily on the presence of rooftop solar in the state.

Burns has said the alleged campaign contributions make the public look at the commission "with suspicion and mistrust." He said Friday that he was reviewing the documents.

The commission regulates electricity providers, water companies and other firms that hold monopoly power in the state, including setting rates. It also oversees securities regulation, railroad and pipeline safety and facilitates business incorporation. It has executive, judicial and legislative power over the firms it regulates.

Attorney General Mark Brnovich in May issued a legal opinion that said a single commissioner could require regulated utilities to disclose whether they spent money to influence an election.

Burns, who is running for re-election, has been rebuffed by the other four commissioners in his effort to hire an outside attorney to analyze how outside interests may be influencing utility regulators' decisions.

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YOUR REGION NEWS

STATE STORIES

AZ lawmakers pass bill limiting ADA lawsuits

The Arizona Legislature passed an amended measure Monday designed to crack down on disability access lawsuits that opponents say are just shakedowns for quick cash settlements, but gutted a proposed compromise between businesses and disability groups.

Feds plan above-average release from Lake Powell

The federal government said Monday it plans to release an above-average amount of water from a major reservoir in the Southwestern U.S. this year, but it's less than many hoped after a healthy snow season

EXHIBIT C



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ORIGINAL

Arizona Corporation Commission

DOCKETED

SEP 17 2015

DOCKETED BY

Attorneys for Intervenors Renz Jennings, William Mundell, and Sunrun, Inc.,

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
CHAIRWOMAN

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

DOUG LITTLE
COMMISSIONER

BOB STUMP
COMMISSIONER

IN THE MATTER OF THE
APPLICATION OF ARIZONA
PUBLIC SERVICE COMPANY FOR
APPROVAL OF NET METERING
COST SHIFT SOLUTION.

) DOCKET NO. E-01345A-13-0248
)
) APPLICATION FOR REHEARING OF
) DECISION NO. 75251 ON THE GROUND
) THAT COMMISSIONERS TOM
) FORESE AND DOUG LITTLE SHOULD
) HAVE RECUSED THEMSELVES OR
) BEEN DISQUALIFIED FROM
) CONSIDERING THE MATTER BEFORE
) THE COMMISSION

Pursuant to A.R.S. § 40-253, Intervenors Renz Jennings, William Mundell, and Sunrun, Inc., ("Intervenors") apply for rehearing of Decision No. 75251, docketed on August 31, 2015. Intervenors seek a rehearing because Commissioners Tom Forese and Doug Little should have recused themselves or been disqualified from considering the matter before the Commission.

1 Recusal or disqualification is required because of (1) the extraordinary amount of funding
2 contributed to buttress Commissioners Forese and Little's 2014 campaigns (and to thwart the
3 campaigns of their opponents), which achieved a significant and disproportionate influence in
4 the 2014 Commission races; and (2) the temporal connection between that spending and the
5 renewed filing by APS in this docket causes the probability of actual bias to rise to an
6 unconstitutional level and thereby renders participation by Commissioners Forese and Little as
7 arbiters of this matter violative of Intervenors' rights to due process under the United States and
8 Arizona Constitutions and related law. Specifically, and as more fully set forth below,
9 Commissioners Forese and Little were the beneficiaries of \$3.2 million in election support that is
10 generally and objectively believed to have come from, on behalf of, or at the direction of,
11 Arizona Public Service ("APS") or its parent company, Pinnacle West Capital Corporation
12 ("Pinnacle West"). As a result, the due process protections guaranteed by the United States and
13 Arizona Constitutions do not permit Commissioners Forese and Little to preside in their quasi-
14 judicial capacity and pass judgment on matters involving APS, the Commissioners' presumptive
15 benefactor. For these reasons, reconsideration should be granted and Commissioners Forese and
16 Little should recuse themselves, or the Commission should disqualify them from participating in
17 the present proceeding.

18 **Factual Background**

19 **A. Background on the Pending Matter.**

20 On July 12, 2013, APS caused this docket to be opened by its filing of *In The Matter Of*
21 *The Application Of Arizona Public Service Company For Approval Of Net Metering Cost Shift*
22 *Solution* (the "APS Application"). The APS Application claimed that residential customers who
23 have "distributed generation" solar panels installed on their homes ("DG Customers") receive
24 benefits from connection with the power grid, but do not pay their fair share of the costs of that
25 grid. [See Application, 7/12/2013 at 1]¹ On that basis, APS urged the Arizona Corporation
26 Commission ("ACC" or "Commission") to revise the Net Metering mechanism to cease a
27 claimed "subsidy" that "shifts costs" from DG Customers to other APS customers, and that the

28 ¹ Unless otherwise stated, citations to record materials are to papers filed in this docket—No. E-01345A-13-0248.

1 ACC do so without waiting for the next APS rate case to review the Net Metering program. [*Id.*
2 at 4, 7-10, 15] By the time the final public hearing on the matter occurred, APS sought to have
3 the ACC adopt, using the previously created Lost Fixed Cost Recovery mechanism ("LFCR"), a
4 fee that would be applied only to DG Customers. [*See* APS Comments to Staff's Report and
5 Recommended Order, 11/42013 at 2, 4-6] APS revealed it sought an increased fee of about
6 \$56.00 per month on average to be added to DG Customers' power bills. [*Id.* at 4-6]

7 Concurrent with the APS effort, the Arizona Free Enterprise Club ("AFEC"), through its
8 Executive Director, Scott Mussi, entered the discussion. On October 28, 2013, Mr. Mussi
9 submitted a letter to Commissioner Stump in this very docket, setting out AFEC's position on
10 this matter. [*See also* Combined Appendix of Evidence in Support of Intervenor's Applications
11 for Rehearing of Decision 75251 ("Appendix"), exhibit 14] Specifically, the letter stated that
12 AFEC's "position on the [Net Metering] program has been clear from the beginning: providing
13 credits to solar customers that is [*sic*] not based on the market costs of the power is an unfair
14 subsidy that is being paid for by non-solar ratepayers." [*Id.* at ACC_AR0303] Further, Mr.
15 Mussi's letter stated that AFEC disagreed with the ACC "staff's recommendation that the
16 Commission should postpone action until the next rate case," stating that the factually
17 unsupported "cost shift associated with Net Metering will only grow larger over the next several
18 years." [*Id.*] AFEC's letter by Mr. Mussi concluded that "[w]e respectfully request that you
19 move forward with this vital reform and look to end the hidden subsidies embedded in the Net
20 Metering program." [*Id.*]

21 After APS and Scott Mussi on behalf of the AFEC argued to impose the \$56.00 fee
22 immediately and outside a full rate case, the ACC rejected the significant fee increase in a 3 to 2
23 decision, enacted a "compromise" fee of \$0.70 per kilowatt hour of panel capacity per month (on
24 average amounting to \$4.90 per month) on future DG Customers, and required APS to begin its
25 next rate case on June 1, 2015, at which time the issue submitted in this docket would be
26 examined.² [Decision No. 74202, 12/3/2013 at 29-30] That Order was entered on December 3,

27
28 ² Subsequently, on August 21, 2014 (Decision No. 74702), APS successfully persuaded the ACC to postpone its
rate case; thereafter it then reopened this docket, on April 2, 2015, and, as described more fully in the body of this

1 2013, less than nine months before the August 26, 2014, primary election in which two seats on
2 the ACC would be contested, and less than a year before the November 4, 2014, general election
3 at which those two ACC seats would be filled.

4 **B. "Independent" Money Floods and Impacts the 2014 ACC Election.**

5 The race for the two ACC seats in the 2014 cycle included six candidates in the primary
6 election. In the Republican primary, two of the candidates, Republicans Doug Little and Tom
7 Forese, were supported by unprecedented expenditures of "independent money," and two of the
8 candidates, Republicans Vernon Parker and Lucy Mason, were attacked by unprecedented
9 expenditures of "independent money." From the very outset, media reports began attributing the
10 unprecedented expenditures to APS or Pinnacle West, both companies subject to ACC
11 oversight.³ Even the then Chairman of the Commission frequently was faced with, and
12 discussed, the likelihood that the funding source was APS. [Appendix, exhibit 2 at
13 ACC_AR0027-28; *see also* exhibit 2 at ACC_AR0093-94 (Commissioner Stump saying on
14 Facebook "[t]he only two 'special interests' that collectively spent 'millions of dollars' were
15 APS (Pinnacle West) and TUSK and its solar affiliates.")] The amounts spent in support of
16 Forese and Little and in opposition to their opponents, primarily funded by AFEC and Save Our
17 Future Now ("SOFN"), are set forth in the table and associated campaign finance materials in
18 Appendix, exhibit 16.⁴ These organizations spent a total of \$1,712,133.32 on the ACC races in

19 Application, insists that the ACC must now determine to impose a fee on DG Customers and, because of the alleged
20 urgency, do so before the next APS rate case that had been deferred at APS's insistence only eight months before.
21 [See Motion to Reset, 4/2/2015 ("Reset Application")]

22 ³ The term "unprecedented" is not loosely used here. As demonstrated by the controversy that arose in the 2012
23 election cycle in which three ACC seats were contested, the expenditure of independent monies that are or may be
24 linked, even indirectly, to regulated utilities was viewed as highly unusual. In the 2012 ACC races, the Arizona
25 Chamber of Commerce and Industry contributed \$7,500 to election campaigns of the three successful ACC
26 candidates. [Appendix, exhibit 15] Significant concern arose from that contribution when it was revealed that two
27 of the donors to the Arizona Chamber's campaign fund were two utilities regulated by the ACC: APS and Southwest
28 Gas Corporation. One news article describing the concerns raised by such "indirect" spending by regulated utilities
is found in the Appendix as exhibit 15. Commissioner Stump was reported to have said utilities should stay out of
political races involving regulators—"I agree with the policy not to get involved in (commission) races.'" [*Id.* at
ACC_AR0307]

⁴The summary was created from records obtained from the Arizona Secretary of State concerning campaign
finances in the 2014 cycle. The Commission can take administrative notice of these materials. Ariz. Admin. Code §
R14-3-109(T).

1 the Republican primary. [Appendix, exhibit 16 at ACC_AR0342]⁵ After Little and Forese won
2 the Republican primary election, they received significant further support in the general election
3 through additional and unprecedented expenditure of money believed to be linked to APS, and
4 the two Democratic candidates, Sandra Kennedy and Jim Holway, were attacked by
5 unprecedented and objectively believed to be regulated utility-sourced expenditures, with
6 Kennedy the target of the bulk of the attacks. The amounts spent in the general election
7 supporting Forese and Little, and in opposition to Holway and Kennedy, are set forth in the table
8 and associated campaign finance materials in Appendix, exhibit 16, and amounted to a total of
9 \$1,473,993.96. In short, between June 11, 2014 and October 28, 2014, AFEC spent
10 \$453,257.47, and SOFN spent \$2,765,061.97 on the 2014 ACC elections, for a total of
11 \$3,218,319.44 during that five month period. [See Appendix, exhibit 16]

12 The amount the candidates spent in their own campaigns pales in comparison. Forese's
13 campaign spent only \$123,120.00 and \$146,430.00 in the primary and general elections while
14 Little's campaign spent only \$115,120.00 and \$145,453.32 in the primary and general elections.
15 [Id.] Even combining their efforts, the two candidates spent only \$238,240.00 in the primary,
16 and only \$291,883.32 in the general election. [Id.]

17 The apparent effect of the spending on the outcome of the elections is shown in detail on
18 the official canvas tables in Appendix, exhibit 16 at ACC_AR0313-14 and is summarized here.

19 The primary election vote count was:

Candidate:	Votes Received	Percent of Ballots Cast
Forese:	249,951	45.49%
Little:	250,193	45.54%
Mason:	199,821	36.34%
Parker:	163,773	29.81%

23 Total ballots cast: 549,423.

26 ⁵ Because only two candidates for the ACC were on the ballot in the Democratic Party primary, with two ACC
27 seats in contention, those candidates were "unopposed" in the Democratic Primary and so each drew only
28 \$16,095.83 in opposition spending from AFEC during the primary race, which is not counted in the total spent in the
Republican primary, but is included in the description of the total spending during the 2014 election cycle.
[Appendix, exhibit 16]

1 The general election vote count was:

Candidate:	Votes Received	Percent of Ballots Cast
Forese:	761,915	49.55%
Little:	766,864	49.87%
Holway:	557,963	36.28%
Kennedy:	576,482	37.49%
Total ballots cast: 1,537,671		

6 AFEC and SOFN are organizations claiming exemption from taxation under Section
7 501(c)(4) of the Internal Revenue Code. *See* 26 U.S.C. § 501(c)(4). Following the Supreme
8 Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010) corporations are free to
9 contribute unlimited amounts of money independently or to "independent expenditure"
10 committees to support or oppose candidates, although the majority opinion makes it clear that
11 nothing precludes a possible requirement that contributions be disclosed. *Citizens United*, 558
12 U.S. at 370 ("[t]he *First Amendment* protects political speech; and disclosure permits citizens
13 and shareholders to react to the speech of corporate entities in a proper way."). However, under
14 the current provisions of Section 501(c)(4), corporations (along with other contributors) may
15 make contributions to a "(c)(4)" without disclosure of the contributors' identities, giving rise to
16 the term "dark money."⁶

19
20 ⁶ The shield against transparency only survives as long as the (c)(4) benefiting from the contributions remains
21 qualified under Section 501(c)(4). Among other requirements, a (c)(4) must maintain certain campaign spending
22 proportions between "political" advocacy and "social welfare" spending. Specifically, this requirement obligates a
23 (c)(4) organization that conducts political campaigns to solicit and spend "social welfare" funds in at least as large
24 an amount as it spends on political activity. In other words, for every dollar raised and spent on political activity, a
25 (c)(4) that wishes to keep its donors anonymous must raise twice as much in funding as it seeks to spend on political
26 matters, and spend at least half the amount raised on "social welfare" spending. *See, e.g.*, 26 C.F.R. § 1.501(c)(4)-1
27 (organization's primary purpose must be social welfare and not political activity directed at candidates). This has
28 led to some peculiar circumstances, as with the recent controversy with the ASU Foundation, in which APS
contributed funds to the ASU Foundation, a 501(c)(3), that then contributed the funds to SOFN for "social welfare"
spending, which, as a result, facilitated "political" spending of an equal amount. [Appendix, exhibit 17 at
ACC_AR0370-71, 0379-84] Further, unlike a charity qualified under Section 501(c)(3) of the Internal Revenue
Code, a (c)(4) need not even be an incorporated entity, but, as it appears with SOFN, may be an unincorporated
association of one or more individuals or other organizations. *See* 26 U.S.C. § 501(c)(4) (no definition requiring
specific form of entity to qualify). As a result, as in this case with SOFN, very little need be disclosed in public
filings for an "unincorporated association," and so very little is known about the forces behind SOFN. [*See, e.g.*,
Appendix, exhibit 27 (SOFN audit response letter where SOFN discloses its campaign spending, but reveals nothing
about its membership or contributors)]

1 **C. Objectively Viewed, APS/Pinnacle West Funded AFEC and SOFN.**

2 It is widely believed throughout Arizona that SOFN and AFEC were funded by APS or
3 Pinnacle West. This overwhelming public perception, certainly a demonstration of the objective
4 "reasonableness" of that perception given its widely held nature and Pinnacle West's refusal to
5 deny its role, is demonstrated in Appendix, exhibits 17-18. Exhibits 17-18 document, by limited
6 example, the significant and continuing press and social media discussion that the likely source
7 of contributions to AFEC and SOFN is Pinnacle West and/or APS. As previously noted, even
8 the then Chairman of the ACC was called upon to comment on the likelihood that APS was
9 "picking its own regulators" through such spending. [Appendix, exhibit 2 at ACC_AR0027
10 (Stump FB post about Channel 12 interview)] Representatives of Pinnacle West and APS have
11 remained publicly silent about the spending, instead repeating the companies' statements that
12 they decline to comment. [See, e.g., Appendix, exhibit 17 at ACC_AR0378, ACC_AR0393,
13 ACC_AR0398, exhibit 18 at ACC_AR0464-65 and ACC_AR0466]⁷

14 Assuming for a moment that Commissioners Little and Forese have no information that is
15 not publicly available regarding the source of the funds that seeded SOFN and AFEC, an
16 objective observer could reasonably conclude that these Commissioners also believe, like the
17 public at large, that APS (via Pinnacle West) was the source of those funds. It would be
18 unreasonable for them to conclude otherwise. Tellingly, there is evidence to suggest that at least
19 Commissioner Little may even have direct knowledge that APS (via Pinnacle West) is the source
20 of the funds. [Appendix, exhibit 17 at ACC_AR0364 (Little cited as saying the money is coming
21 not from ratepayers but instead from Pinnacle West shareholders)]

22
23 ⁷Pinnacle West is a publicly traded corporation, with its stock traded on the New York Stock Exchange. It therefore
24 is subject to Arizona and federal securities laws. As a result, Pinnacle West's public statements are subject to the
25 laws and rules set forth in and promulgated under the Securities Act of 1933 and the Securities Exchange Act of
26 1934. Pinnacle West is, accordingly, obligated to comply with Section 10(b) of the Securities Exchange Act of 1934
27 and Rule 10b-5, which states that Pinnacle West may not make misstatements of material fact regarding its
28 activities. It appears that, if Pinnacle West is the source of significant contributions to AFEC and/or SOFN,
Pinnacle West cannot deny having made such contributions to AFEC and SOFN because to do so would put the
company at risk for such a violation. If neither Pinnacle West nor APS (or their respective officers, directors or
significant shareholders) made the contributions at issue, it would seem that nothing would prevent them from
stating that fact.

1 Currently an investigation continues regarding the substance of possible discussions that
2 occurred between Scott Mussi, as the Executive Director of AFEC, and Commissioner Bob
3 Stump while the 2014 Corporation Commission races were under way. [See Appendix, exhibit
4 19 (including ACC_AR0496-99, ACC_AR0510-12, ACC_AR0519-22)] Further, there is
5 evidence that Commissioner Stump also engaged in discussions with then candidates Forese and
6 Little. [Id.] Accordingly, there is at least the appearance of high likelihood that Commissioners
7 Stump, Forese and Little have received information, true or false, about contributions by
8 Pinnacle West and/or APS (or affiliated officers, directors or others associated with their
9 interests) to AFEC and SOFN.

10 **D. The Message Was Clear and the Timing Foreseeable.**

11 Certainly the position that AFEC and SOFN supported was clear from their campaign
12 materials that began to appear only seven months after the ACC Decision 74202, issued in this
13 docket. Examples of the “independent” campaign material, and the consistent positions they
14 both took and sent to Arizona voters, are found at Appendix, exhibits 20 (for AFEC) and 21 (for
15 SOFN). Those materials, funded by AFEC and SOFN, demonstrate the substance of the issues
16 of interest to them, and specifically make clear that they support candidates who favor the
17 incumbent utilities and oppose those who would support solar applications in Arizona. For
18 example, one piece claims Parker, Mason, Holway, and Kennedy are purported to “support”
19 Barack Obama’s “energy plan,” states that “Parker and Mason have been supported by the
20 rooftop-solar industry,” and concludes that Net Metering “is an unfair subsidy that is being paid
21 for by non-solar ratepayers,” and that “[w]e ... look to end the hidden subsidies embedded in the
22 Net Metering program.” [Appendix, exhibit 20 at ACC_AR0524-25 (ellipsis in original)] The
23 temporal connection to the APS loss in this docket in November, 2014, reflected in Decision
24 74202, and the launch of these “independent” money campaigns, and their message consistent
25 with the APS position in this docket, is clear. [See Appendix, exhibit 22 at ACC_AR0544 (APS
26 timeline summary)]

27 Commissioners Forese and Little were sworn in to their Commission offices on January
28 5, 2015. Only four months after these two commissioners who were supported by these

1 unprecedented, likely APS-connected expenditures were sworn in, APS filed its Motion to Reset
2 in this docket seeking this time, a \$21.00 fee to be imposed on DG Customers, and that the
3 decision be made immediately rather than in its next rate case. [See Motion to Reset, 4/2/2015 at
4 4, 9-10] It was more than reasonably foreseeable, given the positions previously asserted by
5 APS, AFEC and Scott Mussi *in this very docket*, and the election of Forese and Little with the
6 significant and disproportionate influence provided by the campaign assistance at issue, that APS
7 would reassert those same positions again. Further, despite the companies' continuing public
8 "no comment" position, on May 20, 2015 Pinnacle West President and CEO, Donald Brandt,
9 gave a speech at the company's annual shareholder meeting. In that speech Mr. Brandt
10 acknowledged Pinnacle West had engaged in political spending in the 2014 election cycle.
11 [Appendix, exhibit 23] This statement further supports an objective and reasonable conclusion
12 and perception that Pinnacle West did fund AFEC and SOFN. This was not the first time the
13 company had spent independent money with respect to the matters in this very docket,
14 demonstrating the company's use of the techniques at issue here; of special note, in the first use
15 of such spending connected to this docket, Pinnacle West/APS originally and affirmatively
16 *denied* that it had made such expenditures. [Appendix, exhibit 25 at ACC_AR0558-9 (APS
17 denied funding); *see also* exhibit 25 at ACC_AR0565 (APS admits to funding)]

18 Because Commissioners Forese and Little benefitted from such unprecedented
19 independent campaign support (and unprecedented attacks on their opponents), because such
20 support (and opposition to their opponents) was so extremely large relative to the amount of
21 money spent in the election and the relative size compared to the candidates' own campaigns,
22 and because APS's initial loss and renewed application is so starkly connected temporally to
23 those expenditures that APS's renewed application was reasonably foreseeable, Commissioners
24 Forese and Little must recuse themselves, or be disqualified by the ACC, from participating in
25 this rehearing and in any ongoing proceeding in this docket or with respect to the substance of
26 the matter in this docket.

1

2

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1

1

1 75251 on the Ground that Commissioner Bob Stump Should Have Recused Himself or Been
2 Disqualified From Considering the Matters Before the Commission, 9/18/2015 at 11-13 (citing
3 due process law)] For this Application, the U.S. Supreme Court's 2009 decision in *Caperton v.*
4 *A.T. Massey Coal Company*, 556 U.S. 868 (2009) provides the basis for asking, and ultimately
5 requiring, Commissioners Forese and Little to recuse themselves or otherwise be subject to
6 disqualification. In *Caperton*, the Court ruled that in certain circumstances, which, as will be
7 shown, were actually less extreme than those in this case, significant contributions to the election
8 of a decision maker should be viewed *objectively* as a source of "bias" (or potential bias)
9 requiring the official to recuse himself to uphold the constitutional obligations imposed by the
10 Due Process Clause of the Fourteenth Amendment.

11 A West Virginia jury found the Massey Coal Company liable for fraudulent
12 misrepresentation, concealment, and tortious interference with existing contractual relations and
13 awarded the owner of its competitor, Hugh Caperton, and his affiliated companies, \$50 million
14 in damages. Shortly after the jury trial and award were granted, West Virginia held its 2004
15 judicial elections. *Caperton*, 556 U.S. at 872-73.

16 Rather than support the incumbent justice seeking reelection, Don Blankenship, Massey's
17 chairman and principal officer, supported Brent Benjamin, a new-comer candidate for the
18 Supreme Court, and did so with significant campaign spending. Based on Blankenship's
19 political involvement, during the appeal process, Caperton moved to disqualify now-Justice
20 Benjamin under the Due Process Clause and the State's Code of Judicial Conduct. Justice
21 Benjamin denied the motion, indicating that he found nothing showing bias for or against any
22 litigant. *Id.* at 874. The West Virginia Supreme Court then reversed the \$50 million verdict on a
23 3-2 decision. During the rehearing process, Justice Benjamin refused twice more to recuse
24 himself, although two other Justices did recuse themselves, one that previously had decided for,
25 and one that previously had decided against, Massey. With two "replacement" justices sitting on
26 the matter, the West Virginia Supreme Court once again reversed the jury verdict on a 3 to 2
27 decision. Four months later, Justice Benjamin filed a concurring opinion, defending the West
28 Virginia Supreme Court's opinion and his recusal decision. *Id.* at 874-76. Caperton filed a *writ*

1 of *certiorari* with the Supreme Court, which granted review. *Id.* at 876. The Court reversed,
2 holding that due process required Justice Benjamin to be recused from the case. *Id.* at 890.

3 The Court assessed Justice Benjamin's efforts to examine whether he possessed a bias in
4 the matter and said "Justice Benjamin conducted a probing search into his actual motives and
5 inclinations; and he found none to be improper. We do not question his subjective findings of
6 impartiality and propriety. Nor do we determine whether there was actual bias." *Id.* at 882 ⁸
7 Instead, the Court held that the Due Process Clause requires recusal, regardless of the
8 determination of the lack of actual bias, where "'the probability of actual bias on the part of the
9 judge or decision-maker is too high to be constitutionally tolerable,'" *Id.* at 877 (citing *Withrow*
10 *v. Larkin*, 421 U. S. 35, 47 (emphasis added)).⁹

11 The Court concluded that "the *Due Process Clause* has been implemented by objective
12 standards that do not require proof of actual bias." *Id.* at 883. Instead of a subjective
13 examination of the official's bias, the Court concerns itself with "whether, 'under a realistic
14 appraisal of the psychological tendencies and human weakness,' the interest 'poses such a risk of

15 ⁸ One important reason the Court seemed to be able to follow this path was that, in *Caperton*, there was no allegation
16 of a *quid pro quo* agreement. *Caperton*, 556 U.S. at 886. No such assurance can be asserted in this matter. There is
17 a significant ongoing investigation into the connections that were made during the election cycle involving Scott
18 Mussi, Commissioner Stump and then candidates Forese and Little. Until that investigation is completed, no
19 conclusions likely may be drawn on this element of this matter. Accordingly, a full public accounting of the
20 subjective bias, as was performed and disclosed by Justice Benjamin, should be undertaken by the Commission
and/or Commissioners Forese and Little. At minimum, discovery should be allowed to determine the source of
independent expenditures spent on the Forese and Little campaigns. Requests that various parties respond to
requests for information and, if necessary, the Commission issue subpoenas for this purpose, will follow this
Application.

21 ⁹ Lest one might think the law only applies to judges, the Commission acts in a judicial or at least a quasi-judicial
22 capacity. "The corporation commission in rendering its decision acts judicially." *Southern Pac. Co. v. Arizona*
23 *Corp. Comm'n*, 98 Ariz. 339, 346-347, 404 P.2d 692, 697 (Ariz. 1965). When the Commission exercises its power to
24 hold and adjudicate hearings in a "judicial or quasi-judicial" capacity, it is required to comply with the
25 Constitutional requirements of due process. *Arizona Public Service Co. v. Arizona Corp. Comm'n* 155 Ariz. 263,
271, 746 P.2d 4, 12 (Ariz. App. 1987), *aff'd in part, rev'd in part*, *Arizona Public Service Co. v. Arizona Corp.*
28 *Comm'n*, 157 Ariz. 532, 760 P.2d 532 (Ariz. 1988). Further, in the current docket, for example, the judicial rule
prohibiting *ex parte* communications applies, demonstrating the judicial concept that all the parties be treated fairly
and the arbiters maintain impartiality. See Ariz. Admin. Code § R14-3-113. The rule demonstrates the clear
message that in this docket, as in many others, the Commissioners are sitting in a quasi-judicial role. Commissioner
Bob Stump has acknowledged that the Commission acts in a quasi-judicial capacity. He said "[t]he Commission is a
quasi-judicial office." And, given the nature of the office, he suggested that for a Commissioner to attend a "pro-
APS political event would also be inappropriate." [Appendix, exhibit 2 at ACC_AR0093-94] Similarly, under
Caperton, it is inappropriate for Commissioners Forese and Little to sit in judgment on matters directly involving
their presumptive benefactor(s).

1 actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is
2 to be adequately implemented.” *Id.* at 883 (citing *Winthrow*, 421 U.S. at 47).

3 The Court then established the criteria on which the objective analysis of the risk of bias
4 exists: Specifically, the key metrics established by the Court, and the application of the
5 campaign spending noted by the Court were:

- 6 • **The total amount spent in the election:** Blankenship gave \$2.5 million to “And for the
7 Sake of the Kids,” a committee formed under Section 527 of the Internal Revenue Code
8 and Blankenship directly spent another \$500,000 through additional “independent
9 expenditures” on mailings, letters soliciting donations, and television and newspaper ads
10 all “supporting” Benjamin, which “eclipsed” the candidate campaign’s own spending.
Caperton, 556 U.S. at 873.
- 11 • **The contribution’s relative size in comparison to the total amount of money**
12 **contributed to the campaign:** Blankenship’s \$3 million was more than the total spent
13 by all of Benjamin’s other supporters and Blankenship’s \$3 million was more than three
14 times the total spent by Benjamin’s own committee. The Court noted that, according to
Caperton, Blankenship spent \$1 million more than the two candidates’ own campaign
committees. *Id.*
- 15 • **The apparent effect such contribution had on the outcome of the election:** Benjamin
16 won with a 53.3% to 46.7% margin, comprising approximately a 50,000 vote difference,
17 with the Court noting that it was not necessary to show the “contributions were a
18 necessary and sufficient cause” but merely recognize “the risk that Blankenship’s
influence engendered actual bias [was] sufficiently substantial.” *Id.* at 885.
- 19 • **There was a close temporal relationship between the campaign contributions,**
20 **Benjamin’s election and the pendency of the case:** *Caperton*’s case had been ruled on
21 at trial, was in the process of post-judgment motions and was going to be appealed to the
22 court to which Benjamin sought and was elected to office. “It was reasonably
foreseeable when the campaign contributions were made, that the pending case would be
before the newly elected justice.” *Id.* at 886.

23 **C. Application of *Caperton* to The Contributions Assisting Forese & Little.**

24 As shown in detail in the table at Appendix exhibit 16, in the 2014 ACC primary races,
25 the amount spent by AFEC and SOFN for Forese and Little, and against Parker and Mason,
26 totaled \$1,712,133.32, with an additional \$32,191.66 against Holway and Kennedy, for a
27 primary total of \$1,744,324.98. The amounts spent by Forese and Little’s own campaigns
28 totaled only \$238,240.00 in the primary. [Appendix, exhibit 16 at ACC_AR0342] Judging by

1 the first two elements of the *Caperton* analysis, the total amount spent in the primary election
2 and the relative spending comparison, the amounts spent by AFEC alone and, certainly when
3 combined with SOFN, "eclipsed" the spending by the campaigns of Forese and Little even when
4 combined. The expenditures by AFEC alone, as directed by Scott Mussi totaled \$453,257.47,
5 and the amounts by both AFEC and SOFN combined totaled \$1,744,324.98, which more than
6 meet the *Caperton* test. With respect to the "relative" spending comparison, AFEC's primary
7 spending alone achieved a nearly 200% multiplier over the candidates' combined primary
8 spending; and with SOFN, the two organizations' spending achieved more than a 700%
9 multiplier over the candidates' combined primary spending.¹⁰

10 In the general race, the amount spent by SOFN for Forese and Little and against Holway
11 and Kennedy totaled \$1,473,993.96. The amounts spent by Forese and Little's own campaigns
12 totaled \$291,883.32. As in the primary, the first two *Caperton* tests easily were met and
13 exceeded. The amounts spent by SOFN for Forese and Little and in opposition to Holway and
14 Kennedy in the general election exceeds by 500% the amount spent by Forese and Little's own
15 campaigns.

16 One might argue that it has not been conclusively established that Pinnacle West or APS,
17 Pinnacle West's subsidiary that is the moving party in the docket, made the contributions to
18 AFEC or SOFN to support those organizations' extreme dark money spending in the 2014 ACC
19 races. But *Caperton* does not require such a showing.

20 First, in *Caperton*, it was not the Massey Coal Company that made the expenditures in
21 question; it was Don Blankenship, the CEO of Massey, who made the expenditures. *Caperton*,
22 556 U.S. at 872. Further, the spending by AFEC alone in the primary exceeds the "extreme"

23
24 ¹⁰ One might argue that the amounts should be considered separately for Forese and Little, Parker and Mason, and
25 Holway and Kennedy, but even in those instances, the first two factors are clearly satisfied. Further, in most
26 instances, the campaigns of Forese and Little were coordinated, as were the campaigns of Parker and Mason and
27 Holway and Kennedy. Moreover, the support and attack materials issued by AFEC and SOFN were also
28 "combined" support and attack efforts to a great extent, so a combined assessment seems appropriate. On the other
hand, both Parker and Kennedy received significant additional attention in attack materials, but one likely could
determine that the attention was driven by initial polling that demonstrated the two were the more popular
candidates initially, who would, as a political matter, require greater negative attacks to assure their defeat.
Discovery, if allowed, likely would establish these facts.

1 circumstances demonstrated in *Caperton*, and it is clear that Scott Mussi established his interest
2 and that of AFEC in this very docket prior to the 2014 election. Having established the desired
3 positions, Scott Mussi, as Executive Director of AFEC, then directed the spending in question
4 thereafter. Those positions still stand in the pending Reset Application by APS in this very same
5 docket. Scott Mussi's positions in this docket and his control of the spending in question meets
6 the test established in *Caperton*. As that Court held: "We conclude that there is a serious risk of
7 actual bias—based on objective and reasonable perceptions—when a person with a personal
8 stake in a particular case has a significant and disproportionate influence in placing the judge on
9 the case by raising funds or directing the judge's election campaign when the case was pending
10 or imminent." *Id.* at 884. As it was in *Caperton*, it is here on a matter that began before the
11 election, and now continues immediately thereafter: Scott Mussi and AFEC made clear their
12 positions to be taken before the ACC. It is very clear what position Scott Mussi and AFEC
13 would expect the candidates they supported to take in this docket. Moreover, there is no reason
14 to exclude the AFEC spending in the primary that promoted Forese and Little from having its
15 likely continuing impact in the general election. AFEC's total spending in the 2014 ACC races
16 over a five month period was \$453,257.47. Furthermore, the spending by SOFN was consistent
17 with and parallel to the spending by AFEC. [*compare* Appendix, exhibits 20 and 21] Because
18 SOFN has not disclosed even who its decisions makers are, there is and should be significant
19 concern that the SOFN spending was completely coordinated with that of AFEC.

20 Moreover, this conclusion is significantly supported by the condition in which AFEC
21 appears to have found itself following the primary election. As described in detail in a letter
22 signed by former ACC candidates Vernon Parker and Lucy Mason on August 17, 2014, it
23 appears that AFEC may have exceeded its political spending cap in comparison with its social
24 welfare spending cap. [Appendix, exhibit 24] The letter from these then ACC candidates was in
25 the form of a complaint to the Arizona Attorney General's Office, with copies to Mr. Mussi and
26 AFEC's then legal counsel, describing the factual basis on which to draw that conclusion. It
27 appears that, with such allegations and the possibility that AFEC was at risk for no longer
28 qualifying for protection from disclosing its donors under Section 501(c)(4) of the Internal

1 Revenue Code, AFEC could not risk funding political efforts in the 2014 ACC general elections.
2 See note 5, *supra* at 6. Fortunately for Forese and Little's campaigns, SOFN—APS's objectively
3 apparent cohort in the support of Forese and Little and in the opposition to their opponents,
4 stepped in to undertake that effort.

5 Second, *Caperton* established that there need not be "actual" bias shown in the decision
6 maker; the Court in *Caperton* specifically concluded that it did not refute Justice Benjamin's
7 subjective determination regarding actual bias. *Caperton*, 556 U.S. at 882. Instead, the Court
8 established that the "objective and reasonable perceptions" were the object of the inquiry. *Id.* at
9 884. In this case, there is significant, objective and reasonable public perception and concern
10 that APS and Pinnacle West made significant contributions to AFEC and SOFN for the purpose
11 of influencing and succeeding in the election of Forese and Little. [Appendix, exhibit 17
12 (including particularly at ACC_AR0361, ACC_AR0364 (Little and Forese comments on
13 spending), ACC_AR0405; exhibit 18 at ACC_AR0453-55; exhibit 2 at ACC_AR00094)]
14 Certainly it is also reasonable to conclude that Forese and Little have the same perception of
15 these issues even if they lack specific proof of the connection (although there is currently an
16 inference that they may have such proof themselves). In fact, it would be objectively
17 unreasonable for Little and Forese to conclude anything other than that APS and Pinnacle West
18 were the source of funds spent in the election on their behalf, given the public discussion and
19 perceptions and Don Brandt's own statements. Added to this consideration is the essence of the
20 substantive message in the materials funded by AFEC and SOFN: Those materials are adamantly
21 opposed to the targets of APS's current request in this docket—those that supply distributed
22 generation solar panels. As certainly would be expected of Forese and Little, anyone paying
23 attention to the "terms" on which support was granted by both AFEC and SOFN would
24 understand what would now be expected of him in deciding issues in this docket. Specifically,
25 Net Metering "is an unfair subsidy that is being paid for by non-solar ratepayers," and that
26 "[w]e...look to end the hidden subsidies embedded in the Net Metering program." [See
27 Appendix, exhibit 20 at ACC_AR0524-25] Accordingly, this series of circumstances meets the
28

1 objective standards in *Caperton* and so Forese and Little should recuse themselves or be
2 disqualified by the ACC from participating in this docket.

3 Third, *Caperton* established that it is the decision maker who must recuse himself when
4 objectively, and certainly if subjectively, he determines he is, or is determined to have been,
5 compromised in his ability to sit on a matter. In this instance, and at a minimum, Commissioners
6 Forese and Little have an obligation publicly to disclose their knowledge of the facts surrounding
7 the campaign expenditures, and their perceptions of them, what they know and why and when
8 they came to know such facts about the expenditures. If they claim subjectively to believe that
9 APS and Pinnacle West are not behind the funding of AFEC and SOFN, they should explain
10 how they could have arrived at a conclusion that is so at odds with the evidence and widely held,
11 objectively and reasonably achieved, public conclusion that APS and Pinnacle West funded
12 AFEC and SOFN. Whether or not the public is able to discern the "dots" connecting APS to the
13 AFEC and/or SOFN political spending does not end the inquiry. Because whether the greater
14 public has been provided such information does not mean that Forese and Little have not gained
15 such information.¹¹ Accordingly, Commissioners Forese and Little must both provide a full
16 accounting of their subjective knowledge, and a full statement of their perceptions of the sources
17 of the spending. Further and regardless of Commissioners Forese and Little's subjective
18 knowledge, in these circumstances, with the objective and reasonable conclusion that APS and/or
19 Pinnacle West supplied the resources to AFEC and SOFN, the ACC has its own independent
20 obligation to examine this matter objectively and determine that the objective standards in
21 *Caperton* have been met. Certainly the "reasonable" person standard, as expressed by the public,
22 concludes that it has.

23
24
25 ¹¹ The information has not been disclosed yet for at least three reasons: Except for Don Brandt's statements,
26 Pinnacle West and APS have thus far refused to comment; AFEC and SOFN are shielded (for now) from the
27 obligation to disclose their donors; and the ACC has so far refused to exercise its authority under Article 15, Section
28 4 of the Arizona Constitution to require Pinnacle West, as a publicly traded corporation (and holding company of a
public service corporation), or APS, as a public service corporation, to disclose the information. Certainly,
precedent has been set for the ACC's exercise of this authority, as evidenced by Commissioner Burns' prior
information request on October 30, 2013 in this docket that APS disclose whether or not it had engaged in political
spending with respect to the matter advanced by it in this very docket. [Appendix, exhibit 25 at ACC_AR0561]

1 In addition, the ACC has within its power to obtain the information that some may argue
2 is lacking. Under its authority set forth in the Arizona Constitution, the ACC has the power to
3 demand that APS, as a public service corporation and parent of a public service corporation,
4 supply information on whether it contributed funds to AFEC and/or SOFN, and the ACC has the
5 power to demand that Pinnacle West, as a publicly traded corporation, supply information on
6 whether it contributed funds to AFEC and/or SOFN. Given the gravity of the issues now at
7 stake, including the integrity of the quasi-judicial process in this and other dockets, the ACC
8 should exercise its authority and sweep away the dark-money cloud that now engulfs the ACC,
9 its Commissioners and the important work that lies ahead for Arizona and its citizens.

10 Conclusion

11 Rehearing of Decision No. 75251 should be granted and Commissioners Forese and
12 Little should recuse themselves or be disqualified from adjudicating further proceedings
13 regarding this matter based on the information already publicly available and objectively
14 considered. If, however, the Commission believes further information is necessary, then it
15 should exercise its authority under Article 15, Section 4 of Arizona's Constitution with respect to
16 APS and Pinnacle West spending in the 2014 ACC election, or grant the opportunities for parties
17 to undertake discovery on the subject.

18
19 RESPECTFULLY SUBMITTED this 17th day of September, 2015.

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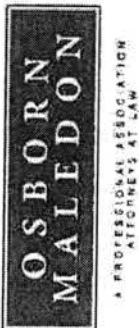
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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Arizona Public Service Company, an Arizona public
service corporation, and Pinnacle West Capital
Corporation, an Arizona corporation,

Plaintiffs,

vs.

Commissioner Robert Burns, a member of the
Arizona Corporation Commission, in his official
capacity,

Defendant.

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No. CV 2016-014895

**VERIFIED COMPLAINT FOR
SPECIAL ACTION AND
DECLARATORY JUDGMENT**

Plaintiffs Arizona Public Service Company and Pinnacle West Capital Corporation
(collectively, the "Companies") for their Complaint against Defendant, allege as follows:

INTRODUCTION

This case involves the latest stage in a year-long campaign of harassment waged by an
Arizona Corporation Commissioner against the Companies for their perceived political speech.
During the 2014 election cycle, certain 501(c)(4) social welfare organizations made
expenditures in connection with Commission elections. Those organizations have not disclosed

1 their donors under Arizona's campaign finance laws, and there is no suggestion that those
2 organizations violated Arizona law by failing to do so.

3 Nevertheless, based on speculation that the Companies may have donated to these
4 social welfare organizations, Defendant Commissioner Robert Burns has issued subpoenas (one
5 to APS, and one to Pinnacle West) compelling the Companies to open their books and publicly
6 divulge any political expenditures, charitable contributions, and lobbying expenditures they
7 may have made in the last five years. The subpoenas are attached as **Exhibit 1**.

8 To Plaintiff's knowledge, the subpoenas are unprecedented. Never before has a single
9 Commissioner, acting without the authority or approval of the Commission and without any
10 allegation of illegality, issued subpoenas compelling two companies to disclose information
11 regarding protected First Amendment activities that Arizona law does not require to be
12 disclosed. The Court should declare that the Commissioner's subpoenas go beyond his lawful
13 authority and enter an order prohibiting him from enforcing them.

14 **PARTIES, JURISDICTION, AND VENUE**

15 1. Plaintiff Arizona Public Service Company ("APS") is an Arizona public service
16 corporation that provides either retail or wholesale electric service to a large portion of the
17 State of Arizona.

18 2. Plaintiff Pinnacle West Capital Corporation ("Pinnacle West") is a publicly
19 traded corporation incorporated in Arizona. APS is a wholly-owned subsidiary of Pinnacle
20 West.

21 3. Defendant Commissioner Burns is one of five members of the Arizona
22 Corporation Commission, an entity created by Article XV, Section 1 of the Arizona
23 Constitution.

24 4. This Court has jurisdiction to hear and adjudicate this Complaint for Special
25 Action and to grant the relief requested under Article 6 § 18 of the Arizona Constitution, A.R.S.
26 §§ 12-123 and 12-1831, and Rule 1 of the Arizona Rules of Procedure for Special Actions.
27 Commissioner Burns has asserted authority to act, without the approval or authorization of the
28

1 Commission as a whole, to issue and enforce the subpoenas. Plaintiffs are, concurrently with
2 this Complaint, seeking an order from the Arizona Corporation Commission quashing the
3 subpoenas. However, given Commissioner Burns's assertion of authority to issue the
4 subpoenas independent of any Commission action, Plaintiffs seek relief in this Court as well as
5 before the Commission.

6 5. Plaintiffs lack an equally plain, adequate, and speedy remedy because A.R.S.
7 § 40-254 provides for judicial review of Commission actions but does not expressly provide for
8 review of actions taken by a single Commissioner without the approval of the Commission.

9 6. Venue is proper in this Court pursuant to A.R.S. § 12-401(16) and Rule 4 of the
10 Arizona Rules of Procedure for Special Actions.

11 **FACTUAL BACKGROUND**

12 **I. Commissioner Burns Requests That APS and Pinnacle West Voluntarily Abstain** 13 **from Engaging in Protected First Amendment Activity.**

14 7. On September 8, 2015, Commissioners Burns and Bitter Smith publicly issued a
15 joint letter "request[ing] that all public service corporations and unregulated entities that appear
16 before the Commission agree to voluntarily refrain from making campaign contributions in
17 support of or in opposition to Corporation Commission candidates." [Letter from
18 Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015).
19 **Exhibit 2.**]

20 8. After emphasizing "APS's alleged contributions to political campaigns," the
21 letter "acknowledge[d] that public service corporations have a First Amendment right to
22 support the candidates of their choice" and that "this constitutional right carries with it the right
23 to contribute to political campaigns."

24 9. The letter also conceded that the "laws governing campaign finance are not
25 within the Commission's purview" and "at the present time, there do not appear to be assertions
26 that Pinnacle West, APS or others have failed to comply with any applicable campaign finance
27 laws."
28

1 10. Nonetheless, Commissioners Burns and Bitter Smith asserted that they
2 personally “view it as unacceptable and inappropriate for public service corporations or others
3 to make campaign contributions in support of or in opposition to any candidate for the
4 Corporations Commission.” According to the letter, this was because such contributions could
5 negatively affect how the public perceived the Commission.

6 11. On October 23, 2015, the Companies responded to Commissioners Burns’s
7 “unusual” and “unprecedented” request and respectfully declined “to forfeit any of their First
8 Amendment rights to speak on public issues.” Noting the long-standing First Amendment
9 protection for corporations to engage in political speech, the Companies expressed concern
10 over “a request from governmental officials with great authority over APS to relinquish one
11 means of expression of this right.” The Companies also highlighted that Commissioner
12 Burns’s request would place APS at a severe disadvantage in the marketplace of ideas because
13 “significant political expenditures will undoubtedly be made by others” who are not regulated
14 by the Commission but who “have strong economic interests in Commission decisions.”
15 [Letter from Donald E. Brandt at 1-3, Docket No. AU-00000A-15-0309 (Oct. 23, 2015).
16 **Exhibit 3.**]

17 **II. Commissioner Burns Requests Records of Campaign Contributions to Confirm**
18 **That Ratepayer Funds Are Not Used for Political Speech.**

19 12. Commissioner Burns pressed ahead with his investigation into the Companies.
20 On November 30, 2015, he sent another letter stating that “in my opinion, your support for any
21 particular candidate should be open and transparent.” Based on that personal view about what
22 Arizona should (but does not) require, Commissioner Burns “ask[ed] APS to provide my office
23 with a full report of all spending related in any way to the 2014 election cycle.” The ostensible
24 purpose of the inquiry was “to find out if APS has spent ratepayer money to support or oppose
25 the election of Arizona Corporation Commission candidates” and “to ensure that only APS’s
26 profits are being used for political speech.” [Letter from Commissioner Burns 1, Docket No.
27 AU-00000A-15-0309 (Nov. 30, 2015). **Exhibit 4.**]

1 13. It would be impossible for APS to recover any 2014 political expenditures from
2 ratepayers, because (as explained in ¶¶ 36-47 below) its rates were set based on APS's
3 expenses in 2010, and because there is already an audit process in place, through APS's general
4 rate case, to ensure that political expenditures cannot be charged to customers in rates.

5 14. APS responded on December 29, 2015, confirming that "any political
6 contribution made by a public service corporation is not treated as an operating expense
7 recoverable in rates." [Letter from Donald E. Brandt 1, Docket No. AU-00000A-15-0309
8 (Dec. 29, 2015). **Exhibit 5.**]

9 **III. Undeterred, Commissioner Burns Broadens His Inquiry After APS Declined to**
10 **"Voluntarily" Pledge to Compromise Its First Amendment Rights.**

11 15. Apparently frustrated that the Companies would not agree to "voluntarily" be
12 cajoled into silence, on January 28, 2016, Commissioner Burns sent another letter that
13 "embark[ed] upon the next stage of my inquiry into APS's possible campaign contributions" in
14 the 2014 election cycle. [Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28,
15 2016). **Exhibit 6.**]

16 16. The January 28 letter stated that the investigation was prompted by the fact that
17 APS had "rejected [the] proposal" to "voluntarily agree to refrain from making political
18 contributions ... in the upcoming election cycle," and then had declined to "provide a report
19 listing any campaign contributions ... by APS in 2014."

20 17. Commissioner Burns announced his intent "to broaden my inquiry to include
21 funds expended on all political contributions, lobbying, and charitable contributions, *i.e.* all
22 donations made—either directly or indirectly—by APS or under APS's brand name for any
23 purpose."

24 18. Commissioner Burns did not, however, take any further action at that time, and
25 APS did not respond to the January 28 letter.

26 19. During an April 12, 2016, Commission meeting, Commissioner Burns
27 threatened to use his vote as a Commissioner as a "tool" to force APS's compliance with his
28

1 demands. Specifically, he stated, "All votes of this Commission are a tool to be used," and that
2 he "will not support any further action items requested by APS with the exception of an item
3 that might have health or safety components" until APS complied with his demands.
4 [Transcript of Open Meeting 12-13 (Apr. 12, 2016). **Exhibit 7.**]

5 20. Commissioner Burns's campaign website continues to advertise, as part of a
6 "[t]imeline of my battle with APS," that he announced in April that he "refuses to vote for APS
7 items until company discloses 'dark money' ties." [Commissioner Bob Burns website. **Exhibit**
8 **8.**]

9 **IV. Commissioner Burns Issues Subpoenas to the Companies and Demands a**
10 **Deposition of the Companies' CEO.**

11 21. Commissioner Burns' next move was to use the power of his office to force the
12 Companies to capitulate to his demands. Commissioner Burns timed the next stages of his
13 harassment of the Companies to coincide with pivotal points of his 2016 re-election campaign,
14 the first of which was the Republican primary on August 30, 2016.

15 22. At the same time, it was reported publicly that a 501(c)(4) organization, funded
16 by one or more parties appearing before the Commission, had begun spending money to
17 support Commissioner Burns's re-election.

18 23. Commissioner Burns first sought to use Commission resources to retain an
19 attorney for the purpose of investigating campaign expenditures in Commissioner elections.

20 24. Commissioner Burns explained that his investigation was designed to prevent
21 "utility overspending and overparticipating, if you will, in the elections of Corporation
22 Commissioners." [Transcript of Open Meeting 49 (Aug. 11, 2016). **Exhibit 9.**]

23 25. At the Commission's August 11 open meeting, the Commission declined to
24 authorize the expenditure of funds for such an investigation. [*Id.*]

25 26. Having failed to convince the Commission to bankroll his investigation, on
26 August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of this
27
28

1 Complaint. [Letter from Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25,
2 2016). **Exhibit 1.**]

3 27. In his cover letter issued with the subpoenas, Commissioner Burns explained
4 that he felt he needed to use the subpoena power because "APS has refused to voluntarily
5 answer my questions about any political expenditures that APS/Pinnacle West may have
6 made." [*Id.*]

7 28. Despite that it would be impossible for APS to have used ratepayer funds for
8 political expenditures, Commissioner Burns once again stated that his purpose was to
9 "determine whether APS has used ratepayer funds for political, charitable or other
10 expenditures." [*Id.*]

11 29. Among other things, Commissioner Burns ordered APS and Pinnacle West to
12 provide, by September 15, 2016, documents and information including:

- 13 (1) all documents "of any kind that describe arrangements governing Pinnacle
14 West's expenditures or donations of funds for any purpose under APS's name or
15 brand";
- 16 (2) all documents "of any kind that describe the arrangements governing the APS
17 Foundation's expenditures or donations of funds for any purpose under APS's
18 name or brand";
- 19 (3) for APS, in each year 2011-2016: "each charitable contribution," "each political
20 contribution," "each expenditure made ... for lobbying purposes," "each
21 marketing/advertising expenditure," and "a list of all expenditures to 501(c)(3)
22 and 501(c)(4) organizations";
- 23 (4) for Pinnacle West, in each year 2011-2016: "all charitable contributions," "all
24 donations for political purposes," "all expenditures to 501(c)(3) organizations,"
25 "all expenditures to 501(c)(4) organizations," and "each marketing/advertising
26 expenditure."
- 27 (5) information on "any foundations or other entities (formed for charitable or other
28 philanthropic purposes) that are related to APS and/or Pinnacle West," including
"how these entities are funded."

[Exhibit 1.]

1 30. In addition, Commissioner Burns seeks to compel the Companies' CEO Donald
2 Brandt to appear for testimony on October 6, 2016, regarding the topics covered in the
3 subpoenas.

4 31. The date October 6, 2016, has no relevance to any proceeding before the
5 Commission, but it is six days before early voting begins for the November general election.

6 32. The Companies' CEO is not the appropriate, most knowledgeable corporate
7 representative to offer testimony regarding "ratepayer funds" and political or charitable
8 contributions and lobbying expenses.

9 33. In addition to these demands, Commissioner Burns threatens in his cover letter
10 that he "intend[s] to publicly file all documents related to this investigation."

11 34. The subpoenas were served on August 26, 2016.

12 35. On information and belief, no other entities have been subpoenaed for the type
13 of information Commissioner Burns seeks to compel from the Companies, including other
14 entities that may have made political expenditures in connection with the Corporation
15 Commission elections.

16 **V. Any Political or Charitable Expenses Are Irrelevant to the Commission's**
17 **Approved Rates.**

18 36. Although Commissioner Burns has asserted that his purpose is to ensure that
19 ratepayer funds are not used for political expenditures or charitable contributions, this is a
20 pretext. Political expenditures or charitable contributions have no connection with ratepayer
21 funds. It is APS and the Commission's long-standing policy that both are excluded from
22 ratemaking.

23 37. Ratepayer funds are the revenue customers pay pursuant to the rates set by the
24 Corporation Commission. A principal role of the Corporation Commission is to set "just and
25 reasonable rates" to be charged by public service corporations such as APS. *See Ariz. Const.*
26 *Art. XV, § 3.*

1 38. In general, the rates the Commission sets “should be sufficient to meet a utility’s
2 operating costs and to give the utility and its stockholders a reasonable rate of return on the
3 utility’s investment.” *Residential Utility Consumer Office v. Ariz. Corp. Comm’n*, 199 Ariz.
4 588, 591 (App. 2001).

5 39. Utility rates are set in rate case proceedings. In those proceedings, the
6 Commission reviews the utility’s books and records for a “test year”—a specified twelve-
7 month period—and uses data from that test year to determine the amount of revenue the utility
8 requires to cover its costs. *See* Ariz. Admin. Code 14-2-103.

9 40. In the rate case proceeding, the Commission examines all of the operating
10 expenses incurred in the test year and claimed by the utility, as well as the value of the utility’s
11 invested capital in the test year. Commission Staff performs an audit of the operating expenses
12 claimed by the utility to ensure that those expenses are eligible to be recovered through
13 customer rates. In addition, an independent accounting firm also reviews APS’s books to
14 ensure that all expenses are properly classified.

15 41. APS’s current rates were set following a full rate case based on a 2010 test year.
16 Thus, with the exception of certain adjustor mechanisms that account for specified expenses
17 outside the test year (which are not relevant here), the current rates reflect solely the operating
18 expenses incurred in 2010 that APS claimed in its rate case should be recovered from
19 ratepayers. If APS incurred other expenses in 2010, but did not seek their recovery in its rate
20 case, those other expenses would not be reflected in rates. [*See also* Letter to Mark Brnovich,
21 Arizona Attorney General, from Chairman Doug Little, Docket No. AU-00000A-15-0309 (Feb.
22 22, 2016). **Exhibit 10.**]

23 42. APS does not, has not, and will not seek to include any political contributions in
24 the costs it seeks to recover from ratepayers.

25 43. The Commission’s own decisions prohibit a public service corporation from
26 including charitable contributions in rates. *See In re Application of Sulphur Springs Valley*
27 *Elec. Coop., Inc.*, 2009 WL 2983260 (A.C.C. Sept. 8, 2009).

44. Pinnacle West is not a regulated entity and does not recover its operating expenses in rates.

45. Pinnacle West does provide business services to APS. To the extent APS seeks to recover in rates the cost of paying Pinnacle West for those business services, the relevant expenses would be submitted as part of the test-year ratemaking described above and subjected to Commission review and audit before they could be included in rates.

46. APS's currently pending rate case is based on a 2015 test year, meaning that only operating expenses from 2015 will have any relevance to rates paid by customers (again, with the exception of certain rate adjustors for specified expenses not relevant here). Those rates will be established by a future Commission decision on APS's current rate case. Before such a decision is issued, Commission Staff will have the opportunity to examine and audit any operating expenses claimed by APS to ensure that they are recoverable in customer rates. In fact, Commissioner Burns, already possesses information from 2010 and 2015 related to expenses recoverable from rates.

47. Thus, any expenses—for any purpose—APS incurred in 2011, 2012, 2013, or 2014 are irrelevant to the rates customers pay, because those rates are based solely on the 2010 test year. Likewise, expenses incurred by Pinnacle West are not relevant.

COUNT ONE

(Declaratory Judgment – First Amendment)

48. The Companies incorporate the preceding paragraphs of this Complaint as if fully set forth here.

49. The First Amendment and Article II, Section 6 of the Arizona Constitution protect the exercise of free speech against government infringement. The First Amendment “has its fullest and most urgent application to speech uttered during a campaign for political office.” *Citizens United v. Fed. Elections Comm’n*, 558 U.S. 310, 339 (2010) (quoting *Eu v. San Francisco Cnty. Democratic Central Comm.*, 489 U.S. 214, 223 (1989)) (internal quotation marks omitted).

50. In addition, the “decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995).

51. "The First Amendment protects political association as well as political expression," *Buckley*, 424 U.S. at 15 (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)), and the right to political association includes association through financial contribution to political activities or charitable organizations. *Id.* at 65.

52. In light of these principles, the requirement to disclose political expenditures is subjected to, at a minimum, “exacting scrutiny,” which requires that a disclosure requirement be justified by a “sufficiently important government interest” that has a “substantial relation” to the disclosure requirement. *Citizens United*, 558 U.S. at 366-67.

53. The justifications advanced for Commissioner Burns's subpoenas are not important governmental interests, and the subpoenas' selective targeting of only two entities for disclosure does not have a substantial relation to any legitimate government objective.

54. Aside from restricting disclosure regulations to those that meet exacting scrutiny, the First Amendment also prohibits viewpoint discrimination—speech restrictions based on the identity or viewpoint of a speaker. *Citizens United*, 558 U.S. at 340.

55. Commissioner Burns's subpoenas are targeted at APS and Pinnacle West and no other parties. Other speakers with different viewpoints who have spent significant amounts on political expenditures would not be subject to the same constraints as APS and Pinnacle West.

56. Pursuant to A.R.S. § 12-1831, the Companies are entitled to and request a judicial determination and declaratory judgment that Commissioner Burns's subpoenas are unlawful and unenforceable because they constitute unconstitutional viewpoint-based discrimination in violation of the First Amendment and Article II, Section 6 of the Arizona Constitution, and because they fail to satisfy the kind of exacting scrutiny required to justify compelled disclosure of political expenditures.

COUNT TWO

1 **(Declaratory Judgment – Improper and Retaliatory Purpose Under Arizona Law)**

2 57. The Companies incorporate the preceding paragraphs of this Complaint as if
3 fully set forth herein.

4 58. An administrative subpoena may not be issued for an improper, retaliatory
5 purpose.

6 59. Furthermore, a subpoena for deposition may not be used to impose undue
7 burden, annoyance, embarrassment, or oppression. Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P.
8 26(c)(1). Efforts to depose high-ranking company officials are particularly prone to abuse.

9 60. Commissioner Burns's subpoenas seek information that has no relevance to the
10 Commission's regulatory function. The regulation of campaign finance expenditures is not
11 within the scope of authority of the Corporation Commission. The Arizona Constitution, the
12 Arizona Legislature and the citizens of Arizona through the initiative process have expressly
13 delegated the regulation of campaign finance, including disclosure of political expenditures, to
14 other branches of government.

15 61. Commissioner Burns also lacks authority to subpoena documents in the absence
16 of any allegation of wrongdoing and disconnected from any Commission-authorized
17 investigation.

18 62. On information and belief, the true purpose of Commissioner Burns's subpoenas
19 is to exact political retribution for APS's refusal to abide by Commissioner Burns's request that
20 it refrain from political speech and to deter political speech by APS and Pinnacle West. This is
21 confirmed by his threat to publicly disseminate the information he gathers from the subpoenas,
22 despite directly contrary statutory protections of confidential information pursuant to
23 A.R.S. § 40-204(C).

24 63. The subpoenas were issued for improper and retaliatory purposes.

25 64. The subpoenas' demand to depose the Companies' CEO is itself unduly
26 oppressive harassment and only amplifies the improper and retaliatory purpose of the
27 subpoenas as a whole.

28

65. Commissioner Burns's pledge to publicly disseminate the information gathered in the subpoenas is unduly oppressive harassment and amplifies the improper and retaliatory purpose of the subpoenas as a whole.

66. Pursuant to A.R.S. § 12-1831, the Companies are entitled to and request a judicial determination and declaratory judgment that (1) Commissioner Burns's subpoenas are unlawful and unenforceable because they were issued for an improper and retaliatory purpose in violation of Arizona law, (2) the subpoenas' demand for a deposition of the Companies' CEO is unlawful and unenforceable because it is an unreasonably burdensome effort to harass the Companies, and (3) the threatened dissemination of confidential information gathered through the subpoena power is unlawful.

COUNT THREE

(Special Action – Prohibition)

67. The Companies incorporate the preceding paragraphs of this Complaint as if fully set forth here.

68. Despite the unlawful purposes and requests made in his subpoenas, Commissioner Burns has stated that he intends to enforce his unlawful subpoenas against the Companies, including punishing the Companies for contempt if there is non-compliance.

69. Commissioner Burns is therefore proceeding or threatening to proceed without or in excess of legal authority.

70. The Companies have no plain, adequate and speedy remedy at law to prohibit Commissioner Burns from enforcing his subpoena.

71. Therefore, the Companies request that this Court provide special action relief in the nature of a writ of prohibition to prohibit the Commissioner from enforcing the subpoenas served on August 26, 2016.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment:

A. For a declaratory judgment that Commissioner Burns's subpoenas served on the Companies on August 26, 2016, are contrary to law.

B. For special action relief in the nature of a writ of prohibition prohibiting the Commissioner from enforcing the subpoenas served on the Companies on August 26, 2016.

C. For attorneys' fees pursuant to A.R.S. § 12-348 and any other applicable statute or common law theory for attorneys' fees.

D. For taxable costs and nontaxable costs as may be allowed by law.

E. For such other relief as the Court deems just and equitable.

DATED this 9th day of September, 2016.

OSBORN MALEDON, P.A.

By

Mary R. O'Grady

Joseph N. Roth

2929 North Central Avenue, 21st Floor

Phoenix, Arizona 85012-2793

JENNER & BLOCK

Matthew E. Price (*Pro Hac Vice* pending)

1099 New York Avenue, NW

Suite 900

Washington, DC 20001-4412

Attorneys for Plaintiffs

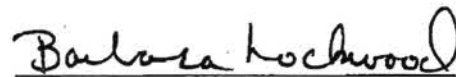
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VERIFICATION

Barbara Lockwood, being first duly sworn, states:

1. I am authorized to verify the foregoing Verified Complaint on behalf of Plaintiffs Arizona Public Service Company and Pinnacle West Capital Corporation. No single person associated with Plaintiffs has personal knowledge of all the facts set forth in the Verified Complaint. Rather, the facts in the Verified Complaint have been compiled from relevant sources held by Plaintiffs. With these qualifications, I am authorized to state that the facts set forth in the foregoing Verified Complaint are true and correct, except matters stated on information and belief, which matters Plaintiffs believe to be true.
2. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9 day of September, 2016.



Barbara Lockwood
Vice President, Regulation

EXHIBITS

Exhibit No. 1

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



**ARIZONA CORPORATION
COMMISSION**



COMMISSIONER

Direct Line: (602) 542-3682
Email: RBurns-web@azcc.gov

ORIGINAL

August 25, 2016

Re: Arizona Public Service Company, Docket No. E-01345A-16-0036 / E-01345A-16-0123

Dear Mr. Brandt:

For nearly two years now, APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made. Consequently, it is necessary for me to proceed in a more direct way.

I now seek to continue my investigation to determine whether APS has used ratepayer funds for political, charitable or other expenditures. This includes all expenditures made by APS, Pinnacle West and under APS's brand name for any purpose.

In his May 4, 2016 legal opinion, Attorney General Brnovich specifically stated that an individual Commissioner's § 4 constitutional authority "could relate to an affiliate of a [public service corporation] only if the affiliate is a Public Company." Ariz. Att'y Gen. Op. 116-130 at 12. In other words, the constitutional powers conferred to individual commissioners in §4 extend to a publicly traded company, which Pinnacle West is.

Please see the attached subpoenas outlining the information I seek. I look forward to your full compliance in this matter. Please be aware that I intend to publicly file all documents related to this investigation.

Sincerely,

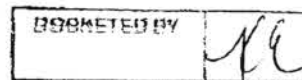
A handwritten signature in black ink, appearing to read "Robert L. Burns".

Robert L. Burns
Commissioner

Arizona Corporation Commission

DOCKETED

AUG 25 2016



RECEIVED
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DOCKET CONTROL
2016 AUG 25 A 11:14

cc: Service list from E-01345A-16-0036

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE COMPANY
FOR A HEARING TO DETERMINE THE
FAIR VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA
SUBPOENA DUCES TECUM**

TO: Arizona Public Service Company
P.O. Box 53999
Phoenix, AZ 85072

400 North 5th Street
Phoenix, AZ 85004

Donald E. Brandt
Chairman, President and Executive Officer
Arizona Public Service Company & Pinnacle West Capital Corporation
Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under oath in connection with the matters set forth in Attachment A (see Attachment B).

1
2 BEFORE WHOM APPEARANCE TO BE MADE:

3 Robert L. Burns, Commissioner
4 Arizona Corporation Commission
5 1200 W. Washington Phoenix, AZ 85007

6 I. **YOU ARE COMMANDED** to bring with you and produce for inspection and
7 copying the following:

8 See Attachment A.
9
10

11 DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

12 September 15, 2016 at 10:00 a.m.

13 PLACE OF APPEARANCE: Arizona Corporation Commission
14 2nd Floor Conference Room
15 1200 W. Washington
16 Phoenix, AZ 85007

17 II. **YOU ARE COMMANDED** to bring with you written responses to the following
18 questions:

19 See Attachment A.
20
21

22 DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

23 September 15, 2016 at 10:00 a.m.

24 PLACE OF APPEARANCE: Arizona Corporation Commission
25 2nd Floor Conference Room
26 1200 W. Washington
27 Phoenix, AZ 85007

28 III. **YOU ARE COMMANDED** to appear and give testimony concerning:

See Attachment A.

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

1 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

2 PLACE OF APPEARANCE: Arizona Corporation Commission
3 Hearing Room #1
4 1200 W. Washington
5 Phoenix, AZ 85007

6 For your convenience, prior to the appearance date for production of documents and written responses
7 requested in I. and II. above, you may turn in the subpoenaed documents and responses to
8 Commissioner Burns' Office located at the above address. If you elect to do this, you need not
9 appear personally at the appointed place and time on September 15, 2016. Personal appearance(s),
10 however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

11 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner
12 Arizona Corporation Commission
13 1200 W. Washington Phoenix, AZ 85007
14 Telephone: 602-542-3682
15 E-mail: rburns@azcc.gov

16 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation
17 Commission and may subject you to further proceedings and penalties under law.

18 Issued this 25 day of August, 2016.

19 
20 Robert "Bob" Burns, Commissioner
21 Arizona Corporation Commission

22
23
24
25 Persons with a disability may request a reasonable accommodation such as a sign language interpreter,
26 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive
27 Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
28 Requests should be made as early as possible to allow time to arrange the accommodation.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA PUBLIC SERVICE
10 COMPANY FOR A HEARING TO
11 DETERMINE THE FAIR VALUE OF THE
12 UTILITY PROPERTY OF THE COMPANY
13 FOR RATEMAKING PURPOSES, TO FIX
14 A JUST AND REASONABLE RATE OF
15 RETURN THEREON, TO APPROVE RATE
16 SCHEDULES DESIGNED TO DEVELOP
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA
SUBPOENA DUCES TECUM**

18 TO: Pinnacle West Capital Corporation
19 400 North 5th Street
20 Phoenix, AZ 85004

21 Donald E. Brandt
22 Chairman, President and Executive Officer
23 Arizona Public Service Company & Pinnacle West Capital Corporation
24 Mail Station 9042
25 P.O. Box 53999
26 Phoenix, AZ 85072

27 In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding
28 the documents and information requests set forth in Attachment A.

29 YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona
30 Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under
31 oath in connection with the matters set forth in Attachment A (see Attachment B).

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BEFORE WHOM APPEARANCE TO BE MADE:

Robert L. Burns, Commissioner
Arizona Corporation Commission
1200 W. Washington Phoenix, AZ 85007

I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:

See Attachment A.

DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

II. YOU ARE COMMANDED to bring with you written responses to the following questions:

See Attachment A.

DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

III. YOU ARE COMMANDED to appear and give testimony concerning:

See Attachment A.

1 In addition to Mr. Brandt, please produce the appropriate person(s) to address questions
2 regarding the documents and information requests set forth in Attachment A.

3 DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

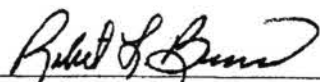
4 PLACE OF APPEARANCE: Arizona Corporation Commission
5 Hearing Room #1
6 1200 W. Washington
7 Phoenix, AZ 85007

8 For your convenience, prior to the appearance date for production of documents and written responses
9 requested in I. and II. above, you may turn in the subpoenaed documents and responses to
10 Commissioner Burns' Office located at the above address. If you elect to do this, you need not
11 appear personally at the appointed place and time on September 15, 2016. Personal appearance(s),
12 however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

13 YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner
14 Arizona Corporation Commission
15 1200 W. Washington Phoenix, AZ 85007
16 Telephone: 602-542-3682
17 E-mail: rburns@azcc.gov

18 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation
19 Commission and may subject you to further proceedings and penalties under law.

20 Issued this 25 day of August, 2016.

21 
22 Robert L. Burns, Commissioner
23 Arizona Corporation Commission
24
25

26 Persons with a disability may request a reasonable accommodation such as a sign language interpreter,
27 as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive
28 Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
Requests should be made as early as possible to allow time to arrange the accommodation.

ATTACHMENT A

Documents

- 1) Please provide the FERC Form 1 filed by APS for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 2) Please provide the SEC 10K filed by Pinnacle West for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 3) Please provide Pinnacle West's annual report to shareholders for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.
- 4) Please provide transcripts of Pinnacle West's quarterly earnings calls for 2011, 2012, 2013, 2014, 2015, and 2016.
- 5) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's use of APS's name or brand.
- 6) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand.
- 7) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand.
- 8) Please provide an organizational chart illustrating the officers, directors and managers for APS.
- 9) Please provide an organizational chart illustrating the officers, directors and managers for Pinnacle West.

For 2011, please provide written responses to the following:

- 1) For calendar year 2011, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2011, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2011, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2011, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2011. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2012, please provide written responses to the following:

- 1) For calendar year 2012, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2012, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2012, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2012, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2012. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2013, please provide written responses to the following:

- 1) For calendar year 2013, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2013, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2013, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2013, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2013. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2014, please provide written responses to the following:

- 1) For calendar year 2014, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2014, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2014, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2014, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix

Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2014. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2015, please provide written responses to the following:

- 1) For calendar year 2015, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For calendar year 2015, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For calendar year 2015, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.
- 4) For calendar year 2015, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.
- 5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2015. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2016, please provide written responses to the following:

- 1) For year to date 2016, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 2) For year to date 2016, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.
- 3) For year to date 2016, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For year to date 2016, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

Affiliated Interests—Please provide written responses to the following:

1) Please provide a list of all charitable donations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.

2) Please provide a list of all donations for political purposes made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.

3) Please provide a list of all expenditures to 501(c)(3) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.

4) Please provide a list of all expenditures to 501(c)(4) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.

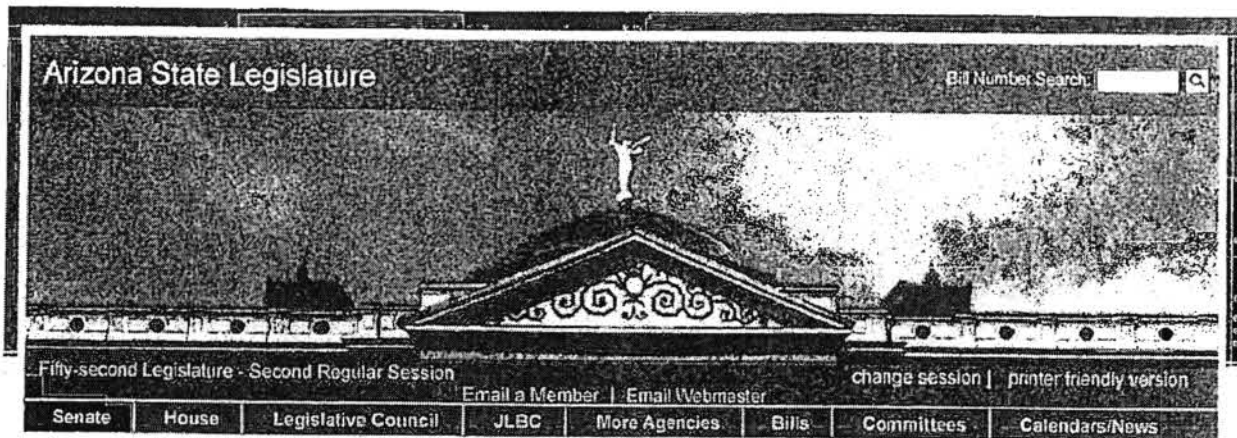
5) Please list each marketing/advertising expenditure made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

6) Please describe any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West. Please describe how these entities are funded. Please describe the arrangements governing the Foundation's use of APS's name or brand.

7) Please see the attached press releases from Pinnacle West, APS, and the APS Foundation (Attachment C). Please describe the relationships between these organizations. For example,

Alan Bunnell is listed as a media contact for all three organizations. Please indicate which entity he works for and which entity pays his salary.

ATTACHMENT B




4. Power to inspect and investigate

Section 4. The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state.

Arizona State Legislature

Bill Number Search:



Fifty-second Legislature - Second Regular Session

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Senate	House	Legislative Council	JLBC	More Agencies	Bills	Committees	Calendars/News
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[ARS TITLE PAGE](#) [NEXT DOCUMENT](#) [PREVIOUS DOCUMENT](#)

40-241. Power to examine records and personnel of public service corporations; filing record of examination


A. The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.

B. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection.

C. A written record of such testimony or statement given under oath shall be made and filed with the commission.

Arizona State Legislature

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40-243. Conduct of hearings and investigations; representation by corporate officer or employee; arbitration

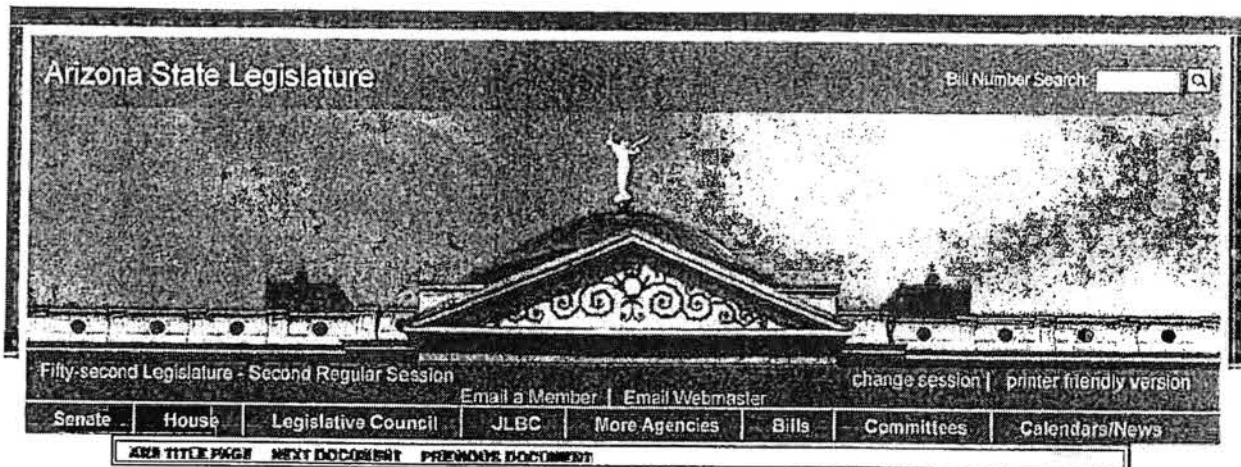
A. All hearings and investigations before the commission or a commissioner shall be governed by this article, and by rules of practice and procedure adopted by the commission. Neither the commission nor a commissioner shall be bound by technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the commission or a commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

B. In a hearing or rehearing conducted pursuant to this article, a public service corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.
2. The representation is not the officer's or employee's primary duty for the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

C. The commission may adopt or administer arbitration procedures to resolve complaints or disputes brought by a party against a telecommunications company, except that the commission shall not subject a wireless provider to arbitration unless the wireless provider and customer consent in writing. This section does not prohibit the commission from arbitrating disputes or complaints against a wireline service provider, involving telecommunications services contained in the bundle of services, to the extent the commission has jurisdiction as authorized pursuant to this chapter.

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40-244. Administration of oaths and certification to official acts by commissioners; taking of depositions; witness fees and mileage

A. Each commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.

B. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

Arizona Court Rules[Home Table of Contents](#)

Rule 45. Subpoena
Arizona Revised Statutes Annotated
Rules of Civil Procedure for the Superior Courts of Arizona
Arizona Revised Statutes Annotated
Rules of Civil Procedure for the Superior Courts of Arizona (Refs & Annos)
VI. Trials (Refs & Annos)

16 A.R.S. Rules of Civil Procedure, Rule 45

Rule 45. SubpoenaCurrentness**(a) Form; Issuance.****(1) General Requirements.** Every subpoena shall:

- (A) state the name of the Arizona court from which it is issued;
- (B) state the title of the action, the name of the court in which it is pending, and its civil action number;
- (C) command each person to whom it is directed to do the following at a specified time and place:
 - (i) attend and give testimony at a hearing, trial, or deposition; or
 - (ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or
 - (iii) permit the inspection of premises; and
- (D) be substantially in the form set forth in Rule 84, Form 9.

(2) *Issuance by Clerk.* The clerk shall issue a signed but otherwise blank subpoena to a party requesting it, and that party shall complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court of Arizona.

(b) For Attendance of Witnesses at Hearing, Trial or Deposition; Objections.

(1) *Issuing Court.* A subpoena commanding a person to attend and give testimony at a hearing or trial shall issue from the superior court for the county in which the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding a person to attend and give testimony at a deposition shall issue from the superior court for the county in which the case is pending.

(2) *Combining or Separating a Command to Produce or to Permit Inspection.* A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.

(3) Place of Appearance.

(A) *Trial Subpoena.* Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding a person to attend and give testimony at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) *Hearing or Deposition Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a hearing or deposition may not require the subpoenaed person to travel to a place other than:

- (i) the county in which the person resides or transacts business in person;
- (ii) the county in which the person is served with a subpoena, or within forty miles from the place of service; or
- (iii) such other convenient place fixed by a court order.

(4) *Command to Attend a Deposition--Notice of Recording Method.* A subpoena commanding a person to attend and give testimony at a deposition shall state the method for recording the testimony.

(5) *Objections; Appearance Required.* Objections to a subpoena commanding a person to attend and give testimony at a hearing, trial, or deposition shall be made by timely motion in accordance with Rule 45(e)(2). Unless excused from doing so by the party or

attorney serving a subpoena, by a court order, or by any other provision of this Rule, a person who is properly served with a subpoena is required to attend and give testimony at the date, time and place specified in the subpoena.

(c) For Production of Documentary Evidence or for Inspection of Premises; Duties in Responding to Subpoena; Objections; Production to Other Parties.

(1) *Issuing Court.* If separate from a subpoena commanding a person to attend and give testimony at a hearing, trial or deposition, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, shall issue from the superior court for the county in which the production or inspection is to be made.

(2) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) *Appearance Not Required.* A person commanded to produce documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person to attend and give testimony at a hearing, trial or deposition.

(4) *Production of Documents.* A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(5) Objections.

(A) Form and Time for Objection.

(i) A person commanded to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, may serve upon the party or attorney serving the subpoena an objection to producing, inspecting, copying, testing or sampling any or all of the designated materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested. The objection shall set forth the basis for the objection, and shall include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection shall be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time and place specified in the subpoena.

(B) Procedure After an Objection Is Made.

(i) If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the objection, except pursuant to an order of the issuing court.

(ii) The party serving the subpoena may move for an order under Rule 37(a) to compel compliance with the subpoena. The motion shall comply with Rule 37(a)(2)(C), and shall be served on the subpoenaed person and all other parties in accordance with Rule 5(c).

(iii) Any order to compel entered by the court shall protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

(C) Claiming Privilege or Protection.

(i) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(ii) If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(6) *Production to Other Parties.* Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information and tangible things that are obtained in response to a subpoena shall be made available to all other parties in accordance with Rule 26.1(a) and (b).

(d) Service.

(1) *General Requirements; Tendering Fees.* A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) *Exceptions to Tendering Fees.* When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.

(3) *Service on Other Parties.* A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).

(4) *Service within the State.* A subpoena may be served anywhere within the state.

(5) *Proof of Service.* Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.

(e) Protection of Persons Subject to Subpoenas; Motion to Quash or Modify

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.

(2) Quashing or Modifying a Subpoena.

(A) *When Required.* On the timely filing of a motion to quash or modify a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if:

(i) it fails to allow a reasonable time for compliance;

(ii) it commands a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);

(iii) it requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) it subjects a person to undue burden.

(B) *When Permitted.* On the timely filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena shall be served on the party or the attorney serving the subpoena in accordance with Rule 5(c). The party or attorney who served the subpoena shall serve a copy of any such motion on all other parties in accordance with Rule 5(c).

(f) *Contempt.* The issuing court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

(g) *Failure to Produce Evidence.* If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.

Credits

Amended July 17, 1970, effective Nov. 1, 1970; July 6, 1983, effective Sept. 7, 1983; Sept. 15, 1987, effective Nov. 15, 1987; Oct. 9, 1996, effective Dec. 1, 1996; June 9, 2005, effective Dec. 1, 2005; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

16 A. R. S. Rules Civ. Proc., Rule 45, AZ ST RCP Rule 45
Current with amendments received through 07/01/16

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ATTACHMENT C

FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell, 602-250-3376
Website: aps.com/newsroom

January 25, 2015

Page 1 of 2

APS INVESTED MORE THAN \$10 MILLION IN ARIZONA NONPROFITS IN 2015

PHOENIX – For more than 125 years, APS has understood that – as one of the only large corporations headquartered in the state – the company has a responsibility to not only provide reliable energy service to its 1.2 million customers, but to strengthen and empower the communities it serves. This belief is embedded in the culture of the company, and starts at the top.

APS announced today that its 2015 community investment in Arizona totaled more than \$10 million. This amount includes grants, sponsorships, and in-kind donations from APS and the APS Foundation to nonprofit organizations and educators throughout the state. In addition, APS employees donated more than 123,000 hours in volunteer time to Arizona nonprofits, an economic impact of \$2.8 million.

"Our long history in the state has shown us that the success of APS is closely tied to the prosperity and health of the communities we serve," said Don Brandt, Chairman, President and CEO of APS. "We are committed to empowering nonprofits to do what they do best, and supporting education programs that will benefit our state's future leaders for years to come. This commitment is ingrained in our culture, and radiates through all of our 6,400 employees."

Among the nonprofits who received grants and contributions from APS and the APS Foundation in 2015:

- The Arizona Science Center received a grant for \$415,500 to support education programs throughout the state. The Science Center's Rural Communities Education Program targets educators from rural school districts, bringing professional development opportunities to STEM teachers across the state. Additional support also was designated for new exhibits.
- The Arizona Hispanic Chamber of Commerce Foundation received a grant for \$250,000 for the Ed and Verma Pastor Legacy Scholarship Program. This scholarship will benefit Latino students majoring in a STEM or a public policy field at any public university or college in Arizona.
- MIND Research Institute received a \$200,000 grant to expand its ST Math program and to partner with ASU to implement a professional development exploratory study with English-language learner students. These programs will expand innovative teaching to low-income students throughout Arizona and will train teachers to use a visual approach that deepens students' problem-solving and reasoning skills, helping them advance their mathematical knowledge.
- UMOM New Day Centers received a grant for \$150,000 to meet the needs of homeless women and families in Maricopa County. The funds will enable UMOM to provide comprehensive services, including housing, healthcare, vocational training and job placement, substance abuse counseling and housing service for residents while they focus on their case plan to end their homelessness.

- The Phoenix Symphony Association received \$225,000 from APS to deliver relevant and entertaining content to a broad range of constituencies and provide civic value through programs that benefit the needs of the community and foster a culture of creativity and innovation.
- The Navajo United Way received a grant for \$100,000 for its Operation Yellow Water Challenge Match. The Navajo United Way is working to ensure that farmers and communities impacted by the closure of the San Juan River, due to toxic waste contamination in August 2015, receive the support they need to irrigate fields and continue their livelihood.
- The Phoenix Art Museum received an \$85,000 grant to support exhibitions, education and The James K. Ballinger American Art and Education Fund.

In addition, in 2015 the APS Foundation supported programs that enhance academic achievement in the areas of Science, Technology, Engineering and Math (STEM):

- Arizona Science Teachers Association received a grant for \$86,000 for its Teacher Leadership Program.
- ASU Foundation for a New American University received a grant for \$80,000 for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers.
- Lowell Observatory received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program.
- The Society of St. Vincent de Paul received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology through instruction in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation (SARSEF) received a \$50,000 grant to bring STEM education for students and teachers to 50 schools in low-income, rural areas.
- Teach for America Inc. received a grant of \$50,000 for its Math/Science initiative, which recruits highly qualified individuals to teach math and science in low-income schools and provides preparation and support to enhance teacher effectiveness.

About APS Foundation

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 to \$2.5 million per year through a bi-annual grant process. Since its inception, the Foundation has invested nearly \$35 million in Arizona nonprofits. For more information, please visit aps.com/corporategiving and click on the Foundation link.

About APS

APS, Arizona's largest and longest-serving electricity utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).



aps.com

FOR IMMEDIATE RELEASE

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June 28, 2016

Page 1 of 2

APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE

Edington transitioning to advisory role; Bement, Cadogan promoted

PHOENIX – Arizona Public Service announced today changes in its senior leadership team at the Palo Verde Nuclear Generating Station. Bob Bement has been appointed Executive Vice President, Nuclear and will continue to report to Randy Edington, Executive Vice President and Chief Nuclear Officer. Jack Cadogan, currently Vice President, Nuclear Engineering, has been named to replace Bement as Senior Vice President, Site Operations. Maria Lacal will continue to serve as Senior Vice President, Regulatory and Oversight. Cadogan and Lacal will report to Bement.

On October 31, Bement will take over as Executive Vice President and Chief Nuclear Officer while Edington shifts to Executive Vice President and Advisor to the CEO.

"I want to thank Randy Edington for his great service to our customers, our company and our state over the past nine years," said Don Brandt, APS Chairman, President and Chief Executive Officer. "When Randy arrived, Palo Verde faced difficult regulatory and operational challenges. He put together a great team, which included Bob Bement, and more quickly than anyone thought possible, restored confidence and operational excellence at the plant. I am proud to say that under Randy's leadership, Palo Verde has become a model for other plants nationally and around the world as one of the best in the industry."

In 2015, Palo Verde generated a record 32.5 million megawatt-hours of carbon-free electricity, marking the 24th consecutive year the plant was the nation's largest power producer. Palo Verde remains the only U.S. generating facility to ever produce more than 30 million megawatt-hours in a year – an operational accomplishment the plant has achieved each of the past seven years and a total of 11 times. In addition, Palo Verde produces 80 percent of Arizona's clean electricity, displacing more than 13.2 million metric tons of greenhouse-gas emissions that would otherwise have been produced to power homes and businesses from Texas to California.

Bement has led the day-to-day nuclear operations at Palo Verde for the past nine years. Prior to joining APS shortly after Edington's arrival in 2007, he held senior nuclear leadership positions at Exelon and with Arkansas Nuclear One and began his nuclear career in the United States Navy as a nuclear-trained electrician.

"Bob Bement has served side-by-side with Randy at Palo Verde almost from Randy's first day at APS. Bob understands the plant culture and was essential in Palo Verde's return to excellence," said Brandt. "Randy and I have always agreed that the true measure of a leader is the organization's ability to excel after that leader is gone. In Bob, we have the ideal successor to continue Randy's outstanding work and to ensure Palo Verde's enduring industry leadership."

APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE

June 28, 2016

Page 2 of 2

Cadogan, who has served as Palo Verde's vice president of nuclear engineering since 2012, will assume Bement's former responsibilities overseeing site operations. Cadogan joined APS in 2009 as director of engineering support before being promoted to director of plant engineering in 2011. In his most recent role, he has been responsible for plant design and project engineering, as well as the nuclear fuels function. Prior to joining APS, Cadogan spent 30 years in the energy industry, holding numerous positions in power plant operations support, design and construction.

Palo Verde is operated by APS and jointly owned by APS, Salt River Project, El Paso Electric Co., Southern California Edison Co., Public Service Co. of New Mexico, Southern California Public Power Authority and the Los Angeles Department of Water & Power.

APS, Arizona's largest and longest-serving electric utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).

PINNACLE WEST | NEWS

CAPITAL CORPORATION

FOR IMMEDIATE RELEASE

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Website: pinnaclewest.com

April 29, 2016

Page 1 of 4

PINNACLE WEST REPORTS 2016 FIRST-QUARTER EARNINGS

- *Results in line with the company's expectations; full-year 2016 earnings guidance affirmed*
- *Major planned fossil power plant outages increase operations and maintenance expenses versus a year ago*
- *Retail sales continue to improve as Arizona's economy continues post-recession growth*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$4.5 million, or \$0.04 per diluted share of common stock, for the quarter ended March 31, 2016. This result compares with \$16.1 million, or \$0.14 per diluted share, for the same period in 2015.

"Financial results were in line with our expectations, especially given the major fossil power plant overhauls and maintenance work that we had built into our budget," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "We remain optimistic that we will achieve our annual targets as customer and electricity sales growth continue to rebound, along with Arizona's improving economy."

Brandt cited a recent study by the U.S. Census Bureau that indicates the Phoenix-metropolitan area is the third-fastest growing of the top 15 metro areas in the U.S. A second report by Arizona's Office of Employment and Population Statistics shows the state has formally matched its pre-recession employment levels, amid expectations of continued solid growth in both population and jobs.

Looking to the immediate future, Brandt added that the company is focused on achieving constructive regulatory outcomes on a number of key energy policy issues, including Arizona's value and cost of distributed generation proceeding, as well as the company's upcoming rate case. "We will continue working with various stakeholders to achieve fair policies that benefit all our customers – and that help ensure a sustainable energy future for all of Arizona," he said.

The 2016 first-quarter results comparison was adversely impacted by increased operations and maintenance expenses, which decreased results by \$0.17 per share compared with the prior-year period. The expense increase was largely comprised of higher fossil plant maintenance costs as a result of more planned work being completed in the 2016 first quarter compared to the 2015 first quarter.

The above costs were partially offset by the following items:

- *The effects of weather variations* improved results by \$0.02 per share compared to the year-ago period despite temperatures that remained less favorable than normal. While residential heating degree-days (a measure of the effects of weather) were 57 percent higher than last year's first quarter, heating degree-days were still 18 percent below normal 10-year averages. A contributing factor was that February 2016 was the third-mildest February in the last 20 years and the fifth-mildest over the last 40 years.
- *Increased retail transmission revenue* positively impacted earnings by \$0.02 per share.
- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved earnings \$0.01 per share. Compared to the same quarter a year ago, weather-normalized sales increased 1.3 percent (partly the result of an additional day of sales due to the leap year), while total customer growth improved 1.3 percent quarter-over-quarter.
- *The net effect of miscellaneous items* increased earnings \$0.02 per share.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the first-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 first-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, April 29. A replay of the webcast can be accessed at pinnaclewest.com/presentations. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Friday, May 6, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13634257.

General Information

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of approximately \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at pinnaclewest.com.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit pinnaclewest.com/investors.

NON-GAAP FINANCIAL INFORMATION

In this press release, we refer to "on-going earnings." On-going earnings is a "non-GAAP financial measure," as defined in accordance with SEC rules. We believe on-going earnings provide investors with useful indicators of our results that are comparable among periods because they exclude the effects of unusual items that may occur on an irregular basis. Investors should note that these non-GAAP financial measures involve judgments by management, including whether an item is classified as an unusual item. We use on-going earnings, or similar concepts, to measure our performance internally in reports for management.

FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, and in Part II, Item 1A of the Pinnacle West/APS Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

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PINNACLE WEST | NEWS

CAPITAL CORPORATION

FOR IMMEDIATE RELEASE

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August 2, 2016

Page 1 of 4

PINNACLE WEST REPORTS 2016 SECOND-QUARTER RESULTS

- *Hotter-than-normal weather positively impacted quarterly results*
- *Residential sales and customer growth improved as Arizona's economy keeps expanding*
- *Investments in planned fossil power plant maintenance and higher benefit costs contributed to increased O&M expenses versus a year ago*
- *Full-year 2016 earnings guidance maintained*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of \$121.3 million, or \$1.08 per diluted share of common stock, for the quarter ended June 30, 2016. This result compares with earnings of \$122.9 million, or \$1.10 per share, in the same 2015 period.

"Hotter-than-normal weather – led by the warmest June on record – positively impacted our earnings compared to the year-ago period," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "The favorable weather helped partially offset an increase in operations and maintenance expenses at a time when we are investing significant resources in planned fossil power plant overhauls and maintenance, as well as new customer information and outage management systems that will improve operational efficiencies, enhance reliability, and create a modernized energy system for all our customers."

In total, O&M expenses during the 2016 second quarter decreased results by \$0.19 per share compared with the prior-year-period. Quarter-over-quarter impacts primarily included the previously mentioned increase in planned fossil plant maintenance and higher employee benefit costs.

The favorable weather contributed \$0.09 per share to the company's bottom line compared to the year-ago period. Highlighted by record June heat, which helped offset a relatively mild April and May, the average high temperature in the 2016 second quarter was 94.5 degrees, while the average high temperature in the same period a year ago was 94.2 degrees. As a result, residential cooling degree-days (a measure of the effects of weather) were 4 percent higher than last year's second quarter, which was impacted by mild weather and one of the coolest Mays on record. Cooling degree-days also were more than 2 percent better than normal 10-year historical averages.

In addition to the effects of weather, the 2016 second-quarter results comparison was positively influenced by the following major factors:

- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved results \$0.04 per share. Underlining an improving Arizona economy, total customer growth was 1.4 percent quarter-over-quarter, and mirrors recent census population data that indicates Phoenix is one of the five fastest-growing cities in the U.S.
- *Adjustment mechanisms* improved earnings by \$0.04 per share compared to the 2015 second quarter. These adjustors included an increase in transmission revenues; revenue from the Company's AZ Sun Program; and higher lost fixed cost recovery (LFCR) revenue.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of \$3.90 to \$4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the second-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 second-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, August 2. The webcast can be accessed at pinnaclewest.com/presentations and will be available for replay on the website for 30 days. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Tuesday, August 9, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13639544.

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of more than \$15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at pinnaclewest.com.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit pinnaclewest.com/investors.

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This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

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- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

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FOR IMMEDIATE RELEASE

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Website: aps.com/newsroom

February 3, 2016

Page 1 of 2

**APS FOUNDATION AWARDS OVER \$2.9 MILLION IN 2015 TO NONPROFITS
WITH A FOCUS ON STEM EDUCATION IN ARIZONA**

PHOENIX – The APS Foundation is proud to be one of the leading supporters of science, technology, engineering and math (STEM) education in Arizona. Since 2012, the APS Foundation has focused its giving on STEM programs to benefit the state's students and teachers. In 2015, the Foundation distributed more than \$2.9 million to nonprofits across Arizona.

"APS is committed to supporting the outstanding organizations doing great work throughout Arizona, particularly in the area of STEM education," said Tina Marie Tentori, Executive Director of the APS Foundation. "Arizona jobs will increasingly depend on science, technology, engineering and math skills. These are the areas of study that drive today's global economy."

The first round of education grants was provided in June 2015 and totaled \$1.4 million to 17 organizations.

Nonprofits receiving grants from the APS Foundation for STEM-related programs in the Foundation's second round of grants for 2015 included:

- **Arizona Science Teachers Association** received a grant for \$86,000 for its Teacher Leadership Program, which provides access to professional development focused on research-based practices aimed at increasing student achievement, building and maintaining the leadership of Arizona science educators and providing resources and information for effective science education for students.
- **Valley of the Sun United Way** received an \$84,000 grant (the first of a three-year, \$250,000 commitment) for its Thriving Together program, a cross-sector collaboration working together to improve academic achievement in Arizona.
- **ASU Foundation for a New American University** received two grants totaling \$104,000. ASU Foundation received \$24,000 for its ExSciTEM (Exploring Science, Technology, Engineering and Math) program at ASU West and an \$80,000 grant for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers. This 10-day institute trains teachers how to integrate STEMSS across the curriculum through content lectures, hands-on activities, participation in science field studies and visits to local corporations showing STEM in practice.
- **Lowell Observatory** received a \$56,500 grant for its Navajo-Hopi Astronomy Outreach Program, now in its 10th year. The program pairs a professional astronomer from Lowell with fifth through eighth grade reservation teachers for one school year. Astronomers visit the partner classroom to lead science discussions and hands-on activities in collaboration with the local teacher. Students also take a field trip to Lowell.

- The Society of St. Vincent de Paul received a \$50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation received a \$50,000 grant to bring STEM education to 50 schools in low-income rural areas.
- Southwest Autism Research and Resource Center (SARRC) received a \$50,000 grant to expand the number of teachers and clinicians educating Arizona's autism population and supporting the educators and districts working with them.
- West-MEC Alliance received a \$50,000 grant for the APS Discover What's Within Program, which will enrich West-MEC's Southwest Campus with STEM programming.
- Science Foundation Arizona received \$25,000 for its Navajo Code Writers STEM Initiative, a program that will introduce computer code writing curriculum to prepare Navajo students for the global economy.
- Experience Matters Consortium Inc. received a \$15,500 grant for its Volunteers in Preparing Students for Success program that provides education and STEM career guidance to low-income high school students.
- Yavapai College Foundation received \$8,200 for College for Kids, a summer educational program providing STEM classes for children aged 5-17.
- Boys & Girls Club of Greater Scottsdale received a grant for \$6,500 for its Da Vinci Disciples and Johnny 5 Alive STEM-based programs.
- Treasures 4 Teachers received a \$5,000 grant to STEM educational kits for hands-on classroom projects.

Videos showcasing STEM success stories resulting from APS Foundation STEM investment can be viewed at aps.com/next.

About APS Foundation

The APS Foundation is committed to making a deep impact in Arizona communities and does so through supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of \$1.5 million to \$2.5 million per year through a bi-annual grant process. Since its inception, it has invested nearly \$38 million in Arizona nonprofits. For more information, please visit www.aps.com/corporategiving and click on the Foundation link.

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FOR IMMEDIATE RELEASE

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July 18, 2016

Page 1 of 2

APS FOUNDATION CONTINUES FOCUS ON STEM EDUCATION
More Than \$1.2 Million Awarded in First Round of 2016 Funding

PHOENIX – Fourteen nonprofit organizations located throughout Arizona and the Four Corners area will receive more than \$1.2 million in STEM-supported grants, the APS Foundation announced today. Supporting science, technology, engineering and math (also known as STEM) and other education programs has been the Foundation's principal focus since 2012.

"Arizona is blessed to have a number of local organizations doing impactful work in STEM educational areas," said Tina Marie Tentori, executive director of the APS Foundation. "These grants will help move their efforts forward, including encouraging and preparing Arizona students to pursue future jobs in technology, clean energy and other STEM-related careers."

The following nonprofits received grants from the APS Foundation:

- **American Indian College Fund** received a \$100,000 grant for a scholarship fund that provides financial support to 15 Navajo college students pursuing majors in STEM or related fields at Navajo Nation-serving tribal colleges and mainstream universities in Arizona and New Mexico, with a particular emphasis around the Four Corners region.
- **Arizona Center for Afterschool Excellence** received \$5,000 for its annual conference dedicated to training 700 childcare providers throughout Arizona on integrating STEM activities into daily programming.
- **Arizona Science Center** received a \$385,000 grant to support the continuation of its Professional Learning and Development Rural Communities Expansion Project, which helps integrate STEM curriculum into rural school districts, including grades 3-8 in Cottonwood, Oak Creek, Humboldt, Winslow, Prescott, Sedona, Tonopah, Florence and Yuma.
- **Flagstaff Chamber of Commerce Foundation** received a \$20,000 grant for its Ready.Set.Code. Digital Initiative which introduces area youth and teachers to the various roles and potential careers that make up the digital workplace eco-system.
- **HandsOn Greater Phoenix** received a \$10,000 grant for its Your Experience Counts academic mentoring program that trains volunteers to work alongside elementary teachers in the classroom, helping with academic improvement in reading, writing, math and science.
- **Audubon Arizona** received a \$25,000 grant for its River Pathways program, which introduces urban youth to environmental science-related careers and gives students access to natural resource professionals.
- **NTC Research Foundation** received a \$108,000 grant for its BrainSTEM program, which brings 45-minute live performances by professional actor/educators to rural schools to introduce STEM principles to low income 5th through 8th graders. The program will reach 20,000 students, 700 teachers and 50 schools.

- **Teach for America** received a \$50,000 grant for a targeted STEM initiative that will sponsor 10 math and science teachers in Title I schools in the Phoenix metropolitan area.
- **Valley of the Sun YMCA** received a \$45,000 grant for its STEM Thursdays program, which provides fun, engaging, hands-on group STEM learning projects and encourages low income elementary school students in the Valley, Yuma, Somerton and Flagstaff to pursue STEM careers.
- **Arizona Chamber Foundation** received a \$100,000 grant for A for Arizona, an initiative to improve and serve K-12 low-income schools throughout Arizona.

Additional organizations receiving grants during this funding cycle include: **Arizona State Parks Foundation, Expect More Arizona, Grand Canyon Association and Great Hearts Academies.**

The next cycle of APS Foundation grant applications opens on July 15 with a deadline of Sept. 1, 2016. Applications and more information on grant eligibility can be found at www.aps.com/corporategiving and clicking on the Foundation link.

About APS Foundation

The APS Foundation is committed to making a deep impact in Arizona communities and does so by supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

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CERTIFICATION OF SERVICE

On this 25 day of August, 2016, the foregoing document was filed with Docket Control as Correspondence from Commissioner Bob Burns and copies of the foregoing were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

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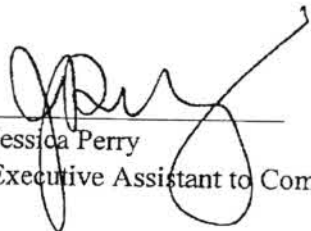
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By:



Jessica Perry
Executive Assistant to Commissioner Bob Burns

Exhibit No. 2

ORIGINAL



0000161900

September 8, 2015

DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309

2015 SEP 8 PM 4 22

Dear [Responsible Party]:

By this letter, we hereby request that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates. We make this request because we believe that political contributions from such entities have damaged the public's perception of the Commission and have placed the Commission in a difficult position.

In the recent past, there have been repeated articles in the press concerning APS's alleged contributions to political campaigns. According to these sources, either APS or Pinnacle West, APS's parent company, allegedly contributed a significant amount of money to certain advocacy organizations, which in turn contributed money in support of or in opposition to a number of candidates. There have also been reports that other entities have also participated in campaign advocacy. When first reported, APS neither confirmed nor denied these claims. Later, however, Pinnacle West appears to have disclosed to its shareholders that it had made campaign contributions in an effort to defend APS against what it considered to be unfair attacks.

We acknowledge that public service corporations have a First Amendment right to support the candidates of their choice. We also recognize that this constitutional right carries with it the right to contribute to political campaigns. The laws governing campaign finance are not within the Commission's purview, and, at the present time, there do not appear to be assertions that Pinnacle West, APS or others have failed to comply with any applicable campaign finance laws. Unfortunately, this technical compliance has not adequately addressed the public's concerns. Especially concerning to us is the public's perception that the Commission, by its silence, has tacitly condoned this behavior.

At this time, we want to make it clear that we view it as unacceptable and inappropriate for public service corporations or others to make campaign contributions in support of or in opposition to any candidate for the Corporation Commission. This behavior has the strong potential to diminish the integrity of the Commission and to engender public doubt as to the Commission's ability to discharge its regulatory responsibilities in a fair and unbiased way. We therefore request that all entities that appear before the Commission—regulated and unregulated—voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates.

We view these requests as a first step in addressing the unfortunate perceptions that have been caused by alleged campaign contributions discussed above. At a future time, we will consider whether and to what extent an audit of any public service corporation would be warranted and whether a request for financial information from unregulated entities would be within the Commission's scope of authority.

In closing, we want to make it clear that we believe in a necessary and appropriate degree of independence and separation between the Commission and the entities—both regulated and unregulated—that appear before it. We will continue to work to preserve that separation. Please respond to this request in writing within 45 days of the date of this letter via the Commission's docket or return mail.

Sincerely,

Susan Bitter Smith
Chairman

Robert L. Burns
Commissioner

Arizona Corporation Commission

DOCKETED

SEP 08 2015

DOCKETED BY	
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Exhibit No. 3

ORIGINAL
PINNACLE WEST
CAPITAL CORPORATION



RECEIVED

2015 OCT 23 P 4: 29

October 23, 2015

DONALD E. BRANDT
Chairman, President and
Chief Executive Officer

Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

Arizona Corporation Commission

DOCKETED

OCT 23 2015

DOCKETED BY

Chairman Susan Bitter Smith
Commissioner Bob Burns
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: September 8, 2015 Letter Concerning Campaign Contributions to ACC
Candidates
Docket No. AU-00000A-15-0309

Dear Chairman Bitter Smith and Commissioner Burns:

On behalf of Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation (the "Companies"), I write in response to the September 8, 2015 letter filed by you in this docket. In that letter, you request that "all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." To say that this request is unusual, if not unprecedented in APS' 125-year history, only begins to highlight the critical nature of the issues it raises.

There is no disagreement that the First Amendment protects the right of individuals and corporations to engage in political speech through campaign expenditures. Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989). APS has always been a major participant in the public life of the State, by virtue of its responsibility to deliver an essential public service to many of its citizens. APS has for many years availed itself of all lawful means to make its views on issues important to its customers, employees and shareholders known to legislators, public officeholders and all those who have an interest in the future of Arizona. Accordingly, a request from governmental officials with great authority over APS to relinquish one means of expression of this right is a serious matter.

Chairman Susan Bitter Smith
Commissioner Bob Burns
October 23, 2015
Page 2

The suggestion that political speech conducted in full compliance with law might threaten the Commission's integrity is troubling. Each Commissioner takes an oath to faithfully and impartially discharge the duties of his or her office. Each Commission decision is made in full public view, must be grounded in the record and must be based upon evidence. The Companies flatly reject any suggestion that Commissioners would base decisions affecting the well-being of the state's citizens other than on the evidence submitted to them, or would otherwise compromise his or her oath of office.

The concerns raised by your request extend beyond this particular Commission and implicate our broader political process. Much of the Commission's work involves legislative policy judgments, similar to work many elected and appointed commissions and public bodies do across the country. If the Companies, or other parties appearing before the Commission, seek to persuade voters to elect Commissioners who support certain policies instead of others, that choice to engage in a public political debate does not reflect on the integrity of commissioners. Nor does political speech reflect on the integrity of legislators in Arizona, or in any other state. This is simply how democracy works: consumers, businesses, and others with an interest in legislative decisions seek to inform voters and persuade them to support the candidates whose positions those speakers favor, and the voters decide which candidates to elect.

Under the Arizona Constitution, Corporation Commissioners are elected officials, accountable to the people of Arizona. Because Commissioners are elected through a democratic process, everyone, including the Companies, has a right to participate in that process.

Vigorous debate about whether and how our system of democracy works has gone on since the founding of our Republic. Throughout, one theme has consistently emerged: if there is a disagreement about who should be elected, or the nature of the First Amendment, or how our system works, "the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). As the U.S. Supreme Court explained decades later, "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United v. Federal Election Commission*, 558 U.S. 310, 339 (2010).

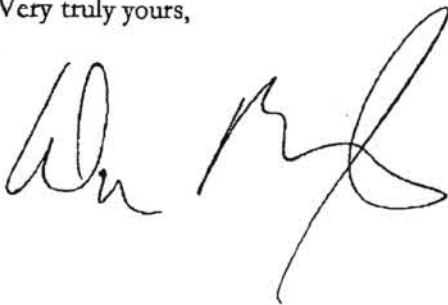
The request that the Companies refrain from exercising their First Amendment rights is particularly problematic because significant political expenditures will undoubtedly be

Chairman Susan Bitter Smith
Commissioner Bob Burns
October 23, 2015
Page 3

made by others who lack the permanence and presence of APS before the Commission and in the state of Arizona. It is no secret that many entities have strong economic interests in Commission decisions. The Commission will not possess jurisdiction over all of these entities. In that circumstance, the Commission will be unable to audit, much less enforce, the promises or practices of such parties in their future campaign financing activities. When one party muzzles itself, while others remain free to speak, the public debate is less informed, more skewed, and ultimately harmful to the "uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

With respect, the Companies cannot agree to forfeit any of their First Amendment rights to speak on public issues. The Companies will continue to advocate for sound policies that enable a sustainable energy future for Arizona.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Bob Stump', written in a cursive style.

c: Commissioner Bob Stump
Commissioner Doug Little
Commissioner Tom Forese

Exhibit No. 4

COMMISSIONERS
SUSAN BITTER SMITH- Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

ORIGINAL



RECEIVED ARIZONA CORPORATION
COMMISSION

2015 NOV 30 P 2:17

November 30, 2015

AZ CORP COMMISSION
DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309, In the Matter of a Generic Docket Regarding the Campaign Contribution Practices of Public Service Corporations and Other Entities that Appear Before the Commission

Dear Mr. Brandt:

In your recent letter, you state that it is both "unusual" and "unprecedented" for us to request information about APS's expenditures for political speech. I find these statements unwarranted, given the attention that these issues have generated over the past months. At the present time, the public appears to look upon the Commission with suspicion and mistrust because of your alleged campaign contributions. This current state of affairs is not in the Commission's best interests, nor is it in your best interests.

I recognize that both APS and Pinnacle West have a First Amendment right to participate in elections, and it is not my intention to interfere with the exercise of those rights. Intuitively, I understand that you have an interest in supporting candidates who may agree with your views. However, in my opinion, your support for any particular candidate should be open and transparent. Your unwillingness to disclose this information leads to a variety of unfortunate perceptions.

There has been discussion about the scope of the Commission's authority to require the disclosure of this information, especially as relates to Pinnacle West. While I contend that article XV, section 4 provides the Commission with the express authority to subpoena such information from both APS and Pinnacle West, I am—for the moment—content to focus my inquiry upon APS. Specifically, I would like to find out if APS has spent ratepayer money to support or oppose the election of Arizona Corporation Commission candidates. I would like to ensure that only APS's profits are being used for political speech.

Simply put, dollars that APS has received from ratepayers in order to recover the costs of providing utility service should not be used for political speech. Unfortunately, I have thus far seen no evidence that such funds are *not* being spent on political speech. Under the circumstances, transparency requires a full reporting of any campaign contributions expended by APS in the past election cycle. Therefore, I am asking APS to provide my office with a full report of all spending related in any way to the 2014 election cycle—including but not limited to direct contributions and indirect contributions to third-party organizations—within thirty days of the date of this letter. The report should be docketed and should include a description of the source of any such funds, *i.e.*, whether the funds originate from APS's profits or from money intended to cover APS's costs of providing service.

The Commission is APS's regulator, and as a duly elected commissioner, I look forward to APS's full compliance with my request.

Sincerely,

Robert L. Burns
Commissioner

Arizona Corporation Commission

DOCKETED

NOV 30 2015

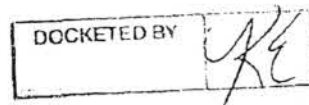


Exhibit No. 5

ORIGINAL



AU-00000A-15-0309

RECEIVED

2015 DEC 30 P 4: 48

AZ CORP COMMISSION
DOCKET CONTROL

DONALD E. BRANDT
Chairman, President and
Chief Executive Officer

Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

December 29, 2015

Commissioner Bob Burns
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Dear Commissioner Burns:

I write in response to your letter of November 30, 2015. In your letter, you note that dollars "received from ratepayers in order to recover the costs of providing utility service should not be used for political speech." APS agrees with that principle, and consistent with standard utility practice and Commission-established guidance, any political contribution made by a public service corporation should not be treated as an operating expense recoverable in rates.

If APS were to make a political contribution, these expenses would be paid for out of the money that the Commission has authorized as a return on shareholder capital—a return that must be offered so that investors are willing to invest money in Arizona's infrastructure.

You state in your letter "I would like to ensure that only APS's profits are being used for political speech." APS does not recover from customers the cost of any political contributions. Compelled disclosure about political contributions that APS or its affiliates may have made out of shareholder profits would go beyond what is required of all corporations under Arizona campaign finance law, and would impinge on APS's First Amendment rights.

I hope this answers your question.

Sincerely,

Arizona Corporation Commission
DOCKETED

DEC 30 2015

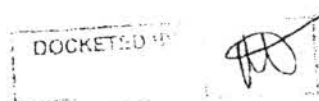


Exhibit No. 6

ORIGINAL

COMMISSIONERS
DOUG LITTLE- Interim Chairman
BOB STUMP
BOB BURNS
TOM FORESE
VACANT



ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION
Direct Line: (602) 542-3682
Email: RBurns-web@azcc.gov



2016 JAN 28 PM 2 49

January 28, 2016

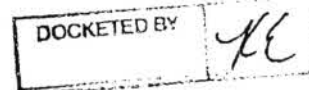
NOTICE OF INVESTIGATION

RE: Docket No. AU-00000A-15-0309

Arizona Corporation Commission
DOCKETED

JAN 28 2016

Dear Mr. Brandt:



It is with regret that I now embark upon the next stage of my inquiry into APS's possible campaign contributions. Originally, I had hoped to address these concerns by focusing upon APS's future behavior, and to that end, I asked APS last year to voluntarily agree to refrain from making political contributions concerning the Corporation Commission in the upcoming election cycle. You rejected that proposal.

I next asked you to provide a report listing any campaign contributions provided by APS in 2014. You declined to provide this information, claiming that such disclosure would "impinge on APS's First Amendment rights." As I have previously stated, I recognize that both APS and Pinnacle West have a First Amendment right to make campaign contributions, and it is not my intention to interfere with the exercise of those rights. It is my position, however, that disclosure requirements do not offend the First Amendment when the information sought is related to the Commission's constitutional and statutory regulatory authority.

In the current climate, there is a public perception that APS has used funds earmarked for its costs of service to support various political campaigns. Recently, I have become concerned about the lack of transparency for all of APS's below-the-line expenditures. In sum, I intend to initiate an investigation pursuant to my authority under A.R.S. § 40-241 to determine whether APS has used above-the-line funds for political, charitable, or other donations. Although my inquiries were initially focused on potential campaign contributions, I now intend to broaden my inquiry to include funds expended on all political contributions, lobbying, and charitable contributions, *i.e.*, all donations made—either directly or indirectly—by APS or under APS's brand name for any purpose.

APS's 2014 FERC Form 1, page 117, reports "donations" (Account No. 426.1) in the amount of \$1,998,442 and "expenses for civic, political & related activities" (Account No. 426.4) in the amount of \$2,883,694. I am interested in examining APS's books and records to determine the specific expenditures that make up these amounts. In addition, I am under the impression that APS's affiliates sometimes make donations using affiliate funds, but under APS's brand name. I would like to examine the full parameters of this arrangement, including a full accounting of all contributions/donations given by APS's affiliates under APS's brand name.

Finally, I am aware that APS and its affiliates, especially Pinnacle West, share commonalities in terms of officers and directors, as well as other personnel. I would like to investigate the degree to which APS and Pinnacle West are intertwined in terms of organization, operation, and structure.

Pursuant to my authority under A.R.S. § 40-241, I hereby expressly direct APS to make its accounts, books, papers, and documents available for inspection. Also pursuant to A.R.S. § 40-241, APS is directed to make available the appropriate person(s) to answer questions about their books, records, and business affairs. I will designate a representative to perform the inspection and the interviews, and pursuant to A.R.S. § 40-241, I intend for those examinations to be conducted under oath so that a written record may be publicly filed pursuant to A.R.S. § 40-241.C.

My office will be in contact with you soon in order to schedule a mutually convenient series of dates for the conduct of this investigation. To be clear, unlike my previous communications, this letter is not intended as a request, but is instead a *requirement* for your cooperation under A.R.S. § 40-241. I look forward to your full compliance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Burns".

Robert L. Burns
Commissioner

Exhibit No. 7

1 BEFORE THE ARIZONA CORPORATION COMMISSION
2
3 IN THE MATTER OF THE APPLICATION OF) DOCKET NO.
4 ARIZONA PUBLIC SERVICE COMPANY FOR) E-01345A-11-0224
5 APPROVAL OF LOST FIXED COST RECOVERY)
6 MECHANISM.)
7
8 _____) OPEN MEETING

8 At: Phoenix, Arizona
9 Date: April 12, 2016
10 Filed: April 13, 2016
11
12
13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 AGENDA ITEM NO. 27
16
17
18
19

20 COASH & COASH, INC.
21 Court Reporting, Video & Videoconferencing
22 1802 N. 7th Street, Phoenix, AZ 85006
23 602-258-1440 staff@coashandcoash.com

24 By: Colette E. Ross, CR
25 Certified Reporter
Certificate No. 50658

Coash & Coash, Inc.

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard at Open Meeting as
3 Agenda Item No. 27 before of the Arizona Corporation
4 Commission, in Hearing Room 1 of said Commission, 1200
5 West Washington Street, Phoenix, Arizona, commencing at
6 12:22 p.m. on the 12th of April, 2016.
7
8

9 BEFORE: DOUG LITTLE, Chairman
10 BOB BURNS, Commissioner
11 TOM FORESE, Commissioner
12 ANDY TOBIN, Commissioner, via teleconference
13

14 APPEARANCES:

15 For the Applicant:

16 Mr. Tom Mumaw
17

18 For the Arizona Corporation Commission:

19 Mr. Thomas Broderick

20 Mr. Rick Lloyd

21 Ms. Janice Alward
22
23
24
25

1 CHMN. LITTLE: All right. Item No. 27, Arizona
2 Public Service Company, E-01345A-11-0224, the
3 application for approval of an annual lost fixed cost
4 recovery mechanism adjustment.

5 MR. BRODERICK: Rick Lloyd on behalf of Staff.

6 MR. LLOYD: Good morning, Chairman Little and
7 Commissioners.

8 Agenda 27 is an application by Arizona Public
9 Service Company for approval of its annual reset of its
10 lost fixed cost adjuster. APS is requesting that the
11 LFCR charge be reset from 1.4592 percent to
12 1.7095 percent of the customer's bill, which would
13 result in an increase of 34 cents per month for a
14 residential customer using the annual average of 1100
15 kilowatt hours per month. The impact on retail revenues
16 from the new LFCR charge is an overall estimated revenue
17 recovery of approximately \$46.4 million for the 12-month
18 collection period.

19 Staff has reviewed the application and believes
20 the LFCR calculation has been completed in compliance
21 with the LFCR plan of administration. Accordingly,
22 Staff is recommending approval of this application.

23 Staff is proposing an amendment to correct two
24 minor errors. And I also note that the company would
25 like to sponsor an amendment, a minor amendment, as to

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1 when the collection period would start.

2 I would be happy to answer any questions you may
3 have regarding this.

4 CHMN. LITTLE: So does the company have a
5 proposed amendment, or maybe not? I will address that
6 question to Mr. Mumaw.

7 Mr. Mumaw, how are you today?

8 MR. MUMAW: Just fine. Tom Mumaw on behalf of
9 Arizona Public Service Company.

10 Our amendment would be on page 6 of the
11 recommended order, line 3. And we would like to
12 substitute the word first for the word next, and then
13 substitute May for April. We would much prefer to begin
14 this charge on the first billing cycle of the month if
15 for no other reason that way everybody pays the same
16 amount of LFCR payments rather than some customers
17 paying 12 payments in the month -- in the year, excuse
18 me, and other customers paying only 11 payments in the
19 month.

20 CHMN. LITTLE: Okay. So give me that one more
21 time so I can write it down.

22 MR. MUMAW: Yes. Line 3, page 6, substitute the
23 word first for next, and so say first available billing
24 cycle of, and then May rather than April. And while I
25 am here, we also support the Staff amendment as well.

1 CHMN. LITTLE: Mr. Broderick, does Staff have
2 any issue with the proposed amendment from the company?

3 MR. LLOYD: We do not.

4 CHMN. LITTLE: Okay.

5 COM. FORESE: Mr. Chairman.

6 CHMN. LITTLE: Commissioner Tobin, please.

7 COM. TOBIN: Mr. Chairman, in the interest of
8 transparency, pursuant to A.R.S. 38-509, I filed in
9 Docket No. AU-00000D-16-0120 a disclosure of possible
10 substantial interest found in Arizona Revised Statute
11 38-502 for the following matter, E-01345A-11-0224,
12 Arizona Public Service's application for approval of its
13 annual lost fixed cost recovery mechanism.

14 Mr. Chairman, I may have a conflict of interest
15 due to my son-in-law being employed by SolarCity, who is
16 participating in this docket. While I, along with many
17 lawyers, disagree with the Special Counsel's
18 interpretation of 38-501, I will refrain from
19 participating in any manner in this docket.

20 I think the general public would agree with me
21 that I do not have a substantial interest in this item.
22 But in the interest of transparency, I would like to
23 file that with the Commission.

24 CHMN. LITTLE: Thank you, Commissioner Tobin.

25 Shay, please note that Commissioner Tobin will

1 be recusing himself from the vote.

2 Commissioner Burns, would you like to move the
3 amendment, excuse me, move the item so we can amend it?

4 COM. BURNS: Mr. Chairman, I move Item 27 be
5 adopted.

6 CHMN. LITTLE: Okay. And I will go ahead and
7 pick this up as Little Proposed Amendment No. 1.
8 Page 6, line 3, substitute the word first for next and
9 substitute the word May for April, and make any
10 conforming changes.

11 So I will propose that Little Amendment No. 1 as
12 I just read it.

13 Mr. Mumaw, does that accomplish what you are
14 looking for?

15 MR. MUMAW: Yes, it does. I think it is fairer
16 and it makes -- it is simpler for everyone.

17 CHMN. LITTLE: Okay. Very good.

18 Commissioner Burns, would you please move the
19 amendment.

20 COM. BURNS: I move the amendment.

21 CHMN. LITTLE: Sorry. I took care of that,
22 didn't I.

23 So could we have a vote on the amendment. All
24 in favor of the amendment, signify by saying aye.

25 (A chorus of ayes.)

1 CHMN. LITTLE: So three votes in favor, one
2 recusal, one not present, the amendment passes.

3 Commissioner Burns, would you please move the
4 item as amended.

5 COM. BURNS: Mr. Chairman, I move Item 27 as
6 amended to be adopted.

7 CHMN. LITTLE: Thank you.

8 Shay, would you please call the roll.

9 MR. MUMAW: Excuse me. Mr. Chairman, do you
10 need to vote on the Staff amendment?

11 CHMN. LITTLE: Oh, yes, I am sorry, we do. I am
12 being remiss.

13 MR. MUMAW: I didn't want to interject myself.

14 CHMN. LITTLE: I am glad you did. I am having
15 some challenges today.

16 Commissioner Burns, would you please move
17 Item -- excuse me, Staff Proposed Amendment No. 1.

18 COM. BURNS: Yes, Mr. Chairman, I move Staff
19 Proposed Amendment No. 1 be adopted.

20 CHMN. LITTLE: All in favor signify by saying
21 aye.

22 (A chorus of ayes.)

23 CHMN. LITTLE: Three votes in favor, Staff
24 Amendment No. 1 passes.

25 Now, Commissioner Burns, would you please move

1 Item No. 27 as amended.

2 COM. BURNS: Mr. Chairman, I move Item 27 as
3 amended be adopted.

4 CHMN. LITTLE: Shay, please call the roll.

5 SECRETARY BERNAL: Commissioner Burns.

6 COM. BURNS: Yes, I would like to explain my
7 vote. And I hope you will bear with me here. It is
8 going to take me a little while to explain, explain this
9 vote.

10 In the oath of office, we talk about the
11 Constitution and the laws of the State of Arizona. But
12 we also said in our oath that we will faithfully and
13 impartially discharge the duties of the office of
14 Corporation Commission Commissioner according to the
15 best of my ability. And I am attempting to do that.
16 And I believe that a vote is a tool in a -- in that
17 process.

18 So the issue that is troubling me is relative to
19 constitutional authority and statutory authority. And
20 so I would like to read a couple of items, one from the
21 Constitution and one from statute.

22 In the Constitution, Article 15, Section 4 says:
23 The power to inspect and investigate.

24 Section 4, the Corporation Commission, and the several
25 members thereof, shall have power to inspect and

1 investigate the property, books, papers, business,
2 methods and affairs of any corporation whose stock shall
3 be offered for sale to the public and of any public
4 service corporation doing business within the state, and
5 for the purpose of the Commission, and of the several
6 members thereof, shall have the power of a court of
7 general jurisdiction to enforce the attendance of
8 witnesses and the production of evidence by subpoena,
9 attachment, and punishment, which said power shall
10 extend throughout the state. Said Commission shall have
11 power to take testimony under commission or deposition
12 either within or without the state.

13 In Section 40, paragraph 241 of the Arizona
14 statutes, power to examine records and personnel of
15 public service corporations, filing record of
16 examination:

17 A, the Commission, each Commissioner and person
18 employed by the Commission may at any time inspect the
19 accounts, books, papers, and documents of any public
20 service corporation, and any such persons who are
21 authorized to administer oaths may examine under oath
22 any officer, agent, or employee of such corporation in
23 relation to the business and affairs of the corporation;

24 B, any person other than a Commissioner or an
25 officer of the Commission demanding such inspection

1 shall produce under the hand and seal of the Commission
2 his authority to make the inspection;

3 C, a written record of such testimony or
4 statement given under oath shall be filed with the
5 Commission.

6 There was a Supreme Court order that contains a
7 paragraph that I would also like to read:

8 The Court stated the Corporation Commission was
9 not designed to protect public service corporations and
10 their management but, rather, was established to protect
11 our citizens from the results of speculation,
12 mismanagement and abuse of power. To accomplish these
13 objectives, the Commission must have the power to obtain
14 information about and take action to prevent unwise
15 management or even mismanagement and to forestall its
16 consequences in intercompany transactions significantly
17 affecting a public service corporation's structure or
18 capitalization.

19 There is a Commission order that has been issued
20 to APS. APS has indicated that they may resist
21 compliance with that order. I am interested in
22 expediting this particular process.

23 If a judge in this state received a refusal or a
24 resistance to comply, I believe the recipient of that
25 order by a judge, a judge in one of the courts in the

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1 state, I believe the recipient of that order would be
2 found in contempt of court. In this case, I believe APS
3 will be, without a timely response to this Commission's
4 order, in contempt of the Commission. If a contempt of
5 the court, one of the state courts, if there were
6 contempt in the court, all of the judges of that court
7 would, I believe, demand immediate compliance.

8 This Commission has the same level of
9 responsibility to the citizens of Arizona. And a
10 failure to respond to a Commission order would be, in my
11 mind, contempt of the Commission and should be met with
12 the same level of demand by the members of this
13 Commission.

14 APS has been granted monopoly status which
15 carries with it tremendous advantages. With those
16 advantages --

17 MS. ALWARD: Chairman.

18 COM. BURNS: -- comes a much higher level of
19 transparency and public reporting than is required by
20 the free competitive market --

21 MS. ALWARD: Chairman.

22 CHMN. LITTLE: Ms. Alward.

23 MS. ALWARD: I hate to interrupt Commissioner
24 Burns. But it seems to me that if Mr. Commissioner
25 Burns's comment is related to this item, then it should

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1 be made clear. Otherwise, we are off the agenda, from
2 my view. I think that every Commissioner, of course,
3 can comment, but it needs to be related to this item.
4 And if Commissioner Burns would like to comment on Item
5 27 in light of his earlier statements, that's fine. But
6 I think we are going off agenda under the open meeting
7 law.

8 COM. BURNS: Well, Mr. Chairman, I believe that
9 I have the opportunity or the right to explain my vote.
10 And my vote is a tool of this Commission. All votes of
11 this Commission are a tool to be used. And I intend to
12 try and use that vote as a tool. And I am explaining so
13 that you will understand what I am trying to get to when
14 I do make my vote.

15 So I would like to be able to continue. I am
16 close to the end of my explanation.

17 CHMN. LITTLE: Commissioner Burns, please
18 continue.

19 And, Ms. Alward, your concern is noted.

20 COM. BURNS: As I stated, APS has been granted
21 monopoly status, which carries with it tremendous
22 advantages. With those advantages comes a much higher
23 level of transparency and public reporting than is
24 required by the free competitive market counterparts.

25 I am voting no on this item and will not support

1 any further action items requested by APS with the
2 exception of an item that might have health or safety
3 components until the Commission order that rests at the
4 APS corporate office is complied with in its entirety.

5 Furthermore, Mr. Chairman, I believe that you,
6 in your position as Chairman of this Commission, have
7 the authority to take that same type of position and
8 expedite an action that has been ordered by this
9 Commission.

10 And, again, with that, I vote no.

11 SECRETARY BERNAL: Commissioner Tobin, recused.
12 Commissioner Stump, excused.

13 Commissioner Forese.

14 COM. FORESE: Aye.

15 SECRETARY BERNAL: Chairman little.

16 CHMN. LITTLE: I am going to vote aye. But I
17 would also like to explain my vote.

18 I certainly understand and appreciate what
19 Commissioner Burns has just said. And in my considered
20 opinion, while he is correct that he has issued a demand
21 letter for information to APS, the ultimate question of
22 whether or not that letter is actually within his
23 authority is still, to my mind, up in the air.

24 I would simply direct anyone to the campaign
25 finances Docket No. last four digits, or, excuse me, the

1 last six digits are 15-0309, in which Commissioner Burns
2 has requested an advisory opinion from the Attorney
3 General, which has been to this point not forthcoming,
4 and my response to his letter to the Attorney General
5 outlining the concerns that I have.

6 I think certainly Commissioner Burns is entitled
7 to vote his conscience and is entitled to his particular
8 point of view on this. I personally disagree with that
9 point of view.

10 And since we do not have a majority, we cannot
11 move this item forward in this meeting. What we will
12 have to do is take this item under advisement in a
13 future open meeting, if I am not incorrect.

14 Is that correct, Ms. Alward?

15 MS. ALWARD: That's correct, Mr. Chairman. By
16 the fact the item hasn't passed, it has not been denied,
17 it just hasn't passed. So the way the Commission
18 typically handles this, it brings it back again for
19 another opportunity for consideration.

20 CHMN. LITTLE: So I will look at docketing this
21 item at a future open meeting. And certainly we will
22 let the parties know when that item is docketed.

23 Any other observations at this point,
24 Commissioner Forese, Commissioner Tobin, Commissioner
25 Burns?

1 COM. BURNS: No.

2 CHMN. LITTLE: Give everybody one last shot at
3 it.

4 COM. FORESE: No.

5 CHMN. LITTLE: Commissioner Burns.

6 COM. BURNS: No.

7 CHMN. LITTLE: Okay. Commissioner Tobin?

8 COM. TOBIN: Mr. Chairman, I have no comments on
9 this issue.

10 CHMN. LITTLE: Okay. Considering the hour, it
11 is now 12:40 -- we have one item remaining that was not
12 to be heard before 1:00 p.m., that item being No. 28,
13 Black Mountain Sewer Corporation -- I am going to
14 declare this open meeting in recess until 1:30 p.m.

15 (The Certified Reporter was excused.)

16 (TIME NOTED: 12:41 p.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings were taken
4 before me; that the foregoing pages are a full,
5 true, and accurate record of the proceedings all done to
6 the best of my skill and ability; that the proceedings
were taken down by me in shorthand and thereafter
reduced to print under my direction.

7 I CERTIFY that I am in no way related to any of
8 the parties hereto nor am I in any way interested in the
outcome hereof.

9 I CERTIFY that I have complied with the
10 ethical obligations set forth in ACJA 7-206(F) (3) and
11 ACJA 7-206 (J) (1) (g) (1) and (2). Dated at Phoenix,
12 Arizona, this 13th day of April, 2016.

13 _____
14 COLETTE E. ROSS
15 Certified Reporter
Certificate No. 50658

16 I CERTIFY that Coash & Coash, Inc., has complied
17 with the ethical obligations set forth in ACJA 7-206
18 (J) (1) (g) (1) through (6).
19
20
21
22
23

24 _____
25 COASH & COASH, INC.
Registered Reporting Firm
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Coash & Coash, Inc.

Exhibit No. 8

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On the Issues

Fighting for you against special interest groups

THE ARIZONA REPUBLIC

Utility Regulator Robert Burns launches investigation of APS spending

One of the key responsibilities of the Arizona Corporation Commission is to provide oversight and regulation of power and utility providers for Arizona residents. In the 2014 elections, it is believed that APS spent over \$3 million dollars to support Corporation Commission candidates to gain loyalty to the power company instead of the ratepayers.

This campaign activity was hidden behind political non-profits (commonly known as "dark money") so ratepayers like you would have no idea that a certain utility was actively trying to choose its own regulators! In the utility industry this is referred to as "Regulatory Capture" and could ultimately result in a loss of representation for Arizona ratepayers.

If regulated public service companies are going to financially support or oppose candidates campaigning for the Corporation Commission (as they have the legal right to do), it must be with full disclosure and transparency. As a member of the Commission, I have fought to require utilities to disclose their political campaign spending, particularly with regards to the elections for Corporation Commission. Ratepayers like you deserve to know if the company you write checks to each month is using that money to buy elections to diminish your influence over the rates you have to pay! I've endeavored to provide this transparency and I will continue this fight until we restore integrity and public confidence to the Arizona Corporation Commission.

Timeline of my battle with APS:

- July 2014 - Candidates push APS about involvement in campaign. Read more...
- July 2015 - What did APS spend to get the regulators it wants? Read more...
- December 2015 - Regulator Robert Burns wants APS to disclose 'dark money' donations Read more...
- December 2015 - APS refuses request to disclose political contributions Read more...
- January 2016 - Utility regulator Robert Burns launches investigation of APS political spending Read more...
- April 2016 - Corporation Commissioner Robert Burns refuses to vote for APS items until company discloses 'dark money' ties Read more...

Standing up to the EPA



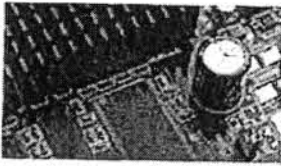
During my tenure at the commission, I have actively worked to prevent EPA overreach. I voted to sue the EPA over Clean Power Plan Rule 111(d) which would all but shut down coal production in our state and, consequently, lead to exorbitant electricity rates. While Arizona and the other states suing the EPA won a temporary victory when the U.S. Supreme Court stayed the implementation of Rule 111(d) pending the outcome of our litigation, I recognize this issue will not be going away and I plan to continue my vigilant fight to ensure an affordable and reliable power supply.

Effective Commission Divisions



The divisions within the Corporation Commission must remain vigilant not only for ratepayers, but all Arizonans. The Corporation Division must always strive to operate as swiftly and efficiently as possible in order to provide a user-friendly system for corporate entry into the Arizona business community. The Securities Division needs to stay on high alert in order to detect and eliminate not only fraud and abuse, but also to protect our senior population from fraudulent security sales. Finally the Safety Division must continue to provide a high level of railroad and pipeline safety. A watchful, efficient commission improves the lives of all Arizonans, not just ratepayers.

Leading the Charge on Emerging Technologies in Energy



I initiated the Commission's study on emerging technologies in energy. In 2014 and 2015, I led 7 workshops consisting of 73 presentations on technological advances in topics including energy storage, distributed generation, energy efficiency and demand response and how they will impact our current utility business model. Through this study, I learned the Commission never passed statewide interconnection rules, which is something we are now working to adopt in order to make the integration of technologies more streamlined and consistent. We also learned about ways to improve our resource planning for the future process and I continue to lead efforts to implement those improvements.

Ensuring Affordable and Reliable Electricity and Water Supplies



In my view, the most important role of a commissioner is to find the balance between safe, reliable electricity and affordable, reasonable prices. The commission's constitutional charge is to keep prices low while also ensuring our utilities are healthy enough to provide reliable service. Arizona is lucky to have one of the most reliable power systems and access to a balanced portfolio of natural gas, coal, nuclear, and renewable energy. Unfortunately, the EPA continues to make one of our cheapest generation sources, coal, more expensive as part of its climate change policies. For the past several years, I have stood up for ratepayers on numerous occasions and will continue to be a voice for ratepayers opposed to prohibitive price increases.

Contact Bob

Elect Robert "Bob" Burns
P.O. Box 6419
Peoria, AZ 85385

Phone: (502) 459-0759
Email: info@bobburns.gop

<http://www.bobburns.gop/issues.aspx>

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Paid for by Elect Robert "Bob" Burns

Exhibit No. 9

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(602) 274-9944
Phoenix, AZ

1 BE IT REMEMBERED that a Staff Meeting was held
2 at the Arizona Corporation Commission, 1200 West
3 Washington Street, Phoenix, Arizona, commencing on the
4 11th day of August, 2016.

5

6 BEFORE: DOUG LITTLE, Chairman
ANDY TOBIN, Commissioner
7 TOM FORESE, Commissioner
(Appeared telephonically)
8 BOB STUMP, Commissioner
BOB BURNS, Commissioner
9

10

11

12 APPEARANCES:

13

For the Arizona Corporation Commission:

14

Janet Wagner, Assistant Director, Legal Division

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Katherine A. McNally
CERTIFIED TRANSCRIBER
CET**D-323

1 (Commencement of Item Number 3 at 00:32:30.)

2 CHMN. LITTLE: Moving to Item 3 of the agenda,
3 Commissioner Tobin.

4 COM. TOBIN: Thank you. Mr. Chairman, I have --
5 I'm a little dismayed about the scope of work that I was
6 presented with, in the announcement by our Executive
7 Director, of the hiring. And there's a lot of reason
8 for that, mostly because I have a lot of scope of work
9 I'd like to see implemented as well.

10 And I get a sense like this was pretty
11 particular and pretty specific to somebody's personal
12 intentions from the Corporation, rather than all of our
13 Commissioners getting together and speaking to the
14 Executive Director and prioritizing those pieces that we
15 think need attention -- or at least consulting services
16 that may be able to make recommendations, whether it be
17 budget or policy or process, procedure, rules.

18 I mean, I have a plethora, whether it be
19 Staffing, elections issues, open meeting review. I
20 mean, I think there's a plethora of items that I think
21 is important for each Commissioner to be able to express
22 to the Executive Director. And we'll pick our top 10 or
23 whatever we think it works, and then have a conversation
24 about what that scope of work is, and then make a
25 decision going out for an RFP for somebody to handle

1 those specifics on that scope of work, rather than just
2 having each one of us now go to Jodi and just say, you
3 know, I have a procedure issue; I have a rules issue. I
4 want you to hire me an attorney. Here's the scope of
5 work. And here's -- by the way, here's the lawyer.

6 You know, so my view is that whatever we have
7 just done in hiring, I want it halted, so that this
8 Commission, as a whole, can coordinate what are the
9 priorities of the Commission and move forward. And I
10 don't see that that's happening with this current
11 process.

12 CHMN. LITTLE: Well, and Commissioner Tobin, I
13 share some of your concerns. I think my concerns are
14 slightly different than yours. One of the things that
15 I'm quite concerned about -- and I expressed this
16 concern after the announcement of this particular
17 contract.

18 First of all, in my opinion, I question whether
19 or not such a project as Commissioner Burns has
20 requested needs to happen at all, number one. And that
21 is based on my personal observation that over the past
22 year and a half here at the Commission one of the things
23 that he's requesting in this scope of work is that a
24 gentleman be hired to determine whether or not there is
25 undue influence being exerted on Commission Staff or

1 Commissioners from outside stakeholders. And in the
2 year and a half that I've been here, I have seen nothing
3 in any interaction with any outside stakeholders. I
4 have seen nothing in any interactions with Staff and
5 outside stakeholders that would lead me to believe that
6 we have an issue here, currently.

7 And to spend nearly \$100,000 worth of taxpayer
8 money is concerning to me, because I, quite frankly,
9 don't see the specific need for it.

10 Now, that's the one issue.

11 I think the other issue is that after seeing the
12 scope of work, which I, by the way, expressed concerns
13 to Ms. Jerich that I thought the scope of work was
14 overly broad. And in response to that, I think you
15 actually have looked at the possibility of narrowing the
16 scope of work somewhat -- or at least clarifying the
17 scope of work.

18 But that really got me thinking about some
19 things. So I actually went out and did a little bit of
20 research on a couple things. And I found some things
21 that were very concerning to me because one of the
22 things that the scope of work identified was a desire to
23 have a neutral third party perform this work on, you
24 know, Commissioner Burns' behalf.

25 And when reviewing a -- I went out and reviewed

1 Scott Hempling's client list, I found a couple things
2 that were interesting. I found, one, that he has done
3 quite a bit of work for a public interest organization
4 called the Energy Foundation. And in fact, he's also
5 been funded for a special project called "Marrying
6 Federal Power Act law with cost-effective environmental
7 objectives". And that work was funded by a grant from
8 the Hewlett Foundation and the Energy Foundation.

9 So doing, again, a little bit of homework, I
10 pulled the Form 990s for the Energy Foundation, which is
11 located in San Francisco, and I found that in 2012,
12 former Commissioner Kris Mayes, who is on the board of
13 that organization, was paid for approximately two hours
14 of work a week. This is the pro forma for the -- for
15 the board members. She was paid \$31,500 for
16 approximately two hours worth of work a week.

17 Now, that is remarkable because most of the rest
18 of the directors were paid either 6 or 40 -- \$6,000 or
19 \$4,500. That was '12.

20 In '13, she was paid \$88,000 a year, again, for
21 a two-hour-per-week approximate workload. And again,
22 the vast majority of the other board members either
23 received compensation of either \$6,000 or \$4,500.

24 And in '14, the compensation did drop back more
25 into line, again, based on a two-hour-per-week

1 contribution, it was \$6,500. But in a period of three
2 years, Commissioner Mayes received compensation in the
3 amount of \$126,000.

4 Now, it strikes me as also very interesting that
5 a company -- or an organization called Save Our AZ
6 Solar, which is currently being administered by former
7 Commissioner Mayes has spent approximately \$457,000 in
8 support of Commissioner Burns' campaign as an
9 independent expenditure committee.

10 It begins to ask the question in my mind whether
11 or not this Mr. Hempling is actually an independent
12 party or not. I would submit that he has enough of a
13 connection to the Energy Foundation and the Energy
14 Foundation has enough of a connection to former
15 Commissioner Mayes and former Commissioner Mayes has
16 enough connection to the independent expenditure
17 committee that I would submit that he probably is not an
18 appropriate choice for an independent investigation.

19 If there's a sense from the rest of the
20 Commissioners that there is indeed a need for some type
21 of investigation like that -- which personally I don't
22 feel that there is -- that if other Commissioners feel
23 that there is a need for it, I certainly think it's
24 worth talking about to determine whether or not there is
25 another person that we could possibly retain.

1 But the thing that I am very concerned about is
2 that any investigation -- and I hesitate to even call it
3 that -- even any examination that we might do of this
4 nature would of necessity need to be by someone who is
5 absolutely irreproachable in terms of their
6 independence. And I just don't feel, based on the
7 information that I've been able to discover on the
8 public Internet, that that's the case here.

9 COM. BURNS: Well, if I could have an
10 opportunity to respond.

11 I think that it's very clear in the constitution
12 and in the statutes that a single Commissioner has the
13 authority to examine records of a corporation. And so
14 with that authority, obviously comes a need to have
15 somebody to do that work, and representatives of the
16 Commissioner are certainly mentioned and allowed in that
17 process.

18 So I think I have the legal authority to go
19 forward with the attorney that I decide to hire.
20 That's -- if I have the independent authority, then I
21 have the authority to hire who I need to fill the bill.
22 And this gentleman has extensive experience, especially
23 in the utility -- the examination of utilities and so
24 forth. So I think he is independent, and I'm not sure
25 that that's the key point. I think it is a key point.

1 But it's somebody that based on his experience
2 and his resume I felt was the best person for the job.
3 I have the authority to hire, and so I went ahead and
4 hired him.

5 Now, if you want to expand the scope of work,
6 that was part of this plan. Part of this plan is to
7 have you talk to this man and express what you think
8 needs to be done different than what we have in our
9 scope of work. Now, obviously it's -- if we add things
10 to the scope of work, we're going to add costs, so I
11 think that needs to be considered as well.

12 Now, if you -- this was a part of the plan was
13 for all Commissioners -- he wants to talk to all the
14 Commissioners. He does not want to have just a single
15 contact; he would like to work with all of us. And so
16 that is part of the plan was to have you and each one of
17 you meet with him and discuss what you think -- if you
18 think there's something missing, then I think you
19 express that to him. But I think we ought to have -- we
20 ought at least have that opportunity to have that
21 discussion.

22 We have him scheduled to arrive here. He's
23 currently out of the country. So when he is available,
24 I think the first thing we ought to have is you ought to
25 have your discussion with this -- with this gentleman

1 and express what you think might be missing.

2 CHMN. LITTLE: And Commissioner Stump? Go
3 ahead, Commissioner Stump.

4 COM. STUMP: Yeah. I just -- they were
5 conferring.

6 COM. BURNS: It's just been pointed out here
7 that Mr. Hempling has worked for at least 27 state
8 Commissions. I mean, this guy is -- has extensive
9 experience. I mean, Texas and Oklahoma, Mississippi,
10 North Carolina. I mean --

11 CHMN. LITTLE: Commissioner Burns, I'm not
12 contesting his depth of experience. I'm contesting the
13 fact that he has been affiliated with an organization
14 who has been affiliated with an organization who has
15 funded a campaign on your behalf. How is that going to
16 make him an independent entity?

17 COM. BURNS: Well, if he had an affiliation in
18 the past with somebody, that doesn't mean he still has
19 that affiliation. I don't understand the connection. I
20 mean --

21 COM. FORESE: May I ask a question,
22 Mr. Chairman?

23 COM. BURNS: If you don't mind, I've got the
24 floor, Mr. Forese. I'd like to finish my comment.

25 I've worked with people in the past. I have

1 no -- I've had affiliations with, but I have no more
2 connection (indiscernible) my life. It -- you move on.
3 You don't have -- you don't stay connected forever.

4 CHMN. LITTLE: I think Commissioner Stump was up
5 next. And Commissioner Forese, I'll ask you to -- if
6 you don't mind waiting until Commissioner Stump makes
7 his comment.

8 COM. FORESE: Sure.

9 COM. STUMP: Thanks, Mr. Chairman. And Bob,
10 just so you know, you know, we've been -- we were seat
11 mates at the legislature for years and you're a good
12 man. I'm not questioning your motives or sincerity when
13 I ask the questions I'm about to ask. And let me sort
14 of lay out the issue as I see it.

15 To my mind -- and this is addressing the need --
16 the very need for this -- we have allegations about a
17 utility spending dark money to affect the outcome of an
18 election. This is legal. It may not be nice. But to
19 the best of my understanding, only changing the law will
20 prevent it from happening again. And as far as I know,
21 there's absolutely nothing that we, as Commissioners,
22 can do to prevent anyone from spending money in races
23 for the Commission, short of changing the law. So there
24 are allegations that are there.

25 We have proof, however, because they admitted it

1 when they were forced to do it, that the biggest entity
2 that has business before this Commission funded a dark
3 money group to harass and smear and sue sitting
4 regulators to try to alter regulatory outcomes.

5 It's anyone's right to engage in and spend money
6 in an election, obviously whether we like it or not.
7 But it's no one's right to spend dark money against
8 sitting regulators in a quasi judicial sitting.

9 So to my mind, it's outrageous for Solar City to
10 fund a dark money group to interfere with the sanctity
11 of this Commission's quasi judicial processes. So --

12 COM. BURNS: Well, could I --

13 COM. STUMP: Yeah. Well, I'm almost -- oh,
14 sure; oh, sure. And I'm almost done. That leads to my
15 question. So this is without a shadow of a doubt an
16 attempt in my view to exert undue influence upon the
17 Commission.

18 So that leads to my first question, Bob, in
19 terms of the scope of the inquiry, will this just
20 alleged utility attempt to exert undue influence? Or
21 will it include nonregulated entities which, needless to
22 say still have business before the Commission? So that
23 was my first question.

24 COM. BURNS: Well, okay. Well, it does include
25 some -- these outside groups.

1 COM. STUMP: Okay.

2 COM. BURNS: People that come before the
3 Commission. I mean, that's part of the goal here is to
4 find out what is going out, what is going on outside of
5 the Commission that might have some kind of negative
6 impact on our processes and on our manner of doing our
7 job and so forth.

8 COM. STUMP: Okay.

9 COM. BURNS: So this is a guy who does big
10 picture examinations. And so I would even say that with
11 the lien program, which we are certainly spending some
12 money on, sort of doing the inside drill down, if you
13 will, could be complemented by having this outside drill
14 down by an expert in the business to evaluate and
15 provide us with reports and information about what he
16 sees with his set of eyes that might be fixed.

17 Now, to say that there's nothing wrong, I think,
18 is just not dealing with reality. I mean, we have had a
19 hundred, and I think -- this morning, I think it was 107
20 records requests come before this Commission. Today --
21 this evening it's 109 -- we got two more today. So it's
22 a never-ending issue, and it's costing us a tremendous
23 amount of money.

24 So from that point alone, if we were to at least
25 have some information available for people out there to

1 understand what's going on, I would hope that this flood
2 of records requests could be turned back.

3 Now, the issue about spending taxpayer money, I
4 think was also brought up. And I'd like to go through
5 the list of what we've been spending for attorneys here
6 at the Commission.

7 We had Contalmi (phonetic), you know, his rates
8 were like \$275 -- \$295 an hour; the cost \$81,863.26.
9 Tim LaSota, \$235 an hour; ended up being \$14,462. Kory
10 Langhofer, \$275 an hour, \$2,862.50. Edward Novak, \$325
11 an hour, \$90,000. We've got close to \$35,000 that we
12 are spending on the lien program, as I understand, at
13 this point, a number that could increase.

14 The independent contractors hired by the
15 Commission in 2015 and 2016 for the UNS rate case,
16 \$202,744.50. The TEP rate case, \$240,887 total. Two
17 contracts, actually, TEP -- okay, it was broken down
18 between the two here at \$215 and \$25. The value and
19 cost of distributed generation, \$50,000. APS rate case,
20 \$131,500. Southwest Gas rate case, \$154,950. So the
21 APS FERC formula rate filing 50,000. Arizona Water
22 Company rate case \$22,900. Sulphur Springs Valley
23 Electric Coop, \$27,274.

24 CHMN. LITTLE: We get the idea where you're
25 going.

1 COM. TOBIN: I'm all right to get rid of all of
2 those, if it's all right with you.

3 CHMN. LITTLE: Well, and what I would object --

4 COM. BURNS: I don't think you're going to get
5 rid of them.

6 MALE SPEAKER: Right.

7 COM. BURNS: It might sound good, but I don't
8 think they're going anywhere.

9 CHMN. LITTLE: What I would -- what I would
10 observe is that the legal expenses that we pay in
11 prosecuting a rate case are considered a normal expense
12 of doing business here. We have to, in some cases, hire
13 outside counsel to work with our in-house counsel to
14 prosecute those rate cases.

15 COM. BURNS: Well, if our processes here are out
16 of whack and need to be fixed, then that's a legitimate
17 expense (indiscernible).

18 CHMN. LITTLE: If you would -- you didn't let me
19 finish my thought, okay? And I want to just say this,
20 and then I want to let Commissioner Forese speak because
21 he's been very patient and I don't -- I want to make
22 sure he doesn't --

23 COM. FORESE: Yes, I have.

24 CHMN. LITTLE: -- I want to make sure that I
25 don't forget it. We haven't forgotten you, Commissioner

1 Forese.

2 The first ones that you mentioned, Contalmi
3 and -- and LaSota and Langhofer and Novak were attorneys
4 that were hired to defend sitting Commissioners
5 (indiscernible) outside legal attacks.

6 This is an attorney that we are considering
7 hiring to essentially evaluate the practices that occur
8 here. And my original contention goes -- I'm going to
9 go right back to it -- you're basically saying in the
10 scope of work that you feel that there have -- and the
11 way the scope of work is worded, it says there may or
12 may not have been outside influence. And what I'm
13 saying is that I don't believe there is any evidence for
14 it. I think it's a fishing expedition, and I think it's
15 a waste of taxpayer money.

16 Now, if -- that's my personal opinion. If there
17 is disagreement on that and the Commissioners would like
18 to expend that money, that's fine. So that's -- I
19 wanted to -- but I wanted to bring that back around.

20 And Commissioner Forese, I'm going to let you
21 have the floor for a few minutes.

22 COM. FORESE: Yeah. And thank you. You know,
23 we're talking to a man who has a famous reputation as a
24 conservative Chairman of Appropriations who now is
25 saying that our correct course of action in the face of

1 this legal spending is to spend additionally. I think
2 the fact that this is blatantly political begs the
3 question, if you know that this attorney is tied to this
4 money being donated to your campaign, why not save the
5 taxpayers this money and just have him be paid out of
6 this money being donated to your guy by his other
7 clients?

8 COM. BURNS: Well, I'm not sure I understand
9 that question. There's no way -- if there's an
10 independent expenditure being done in a campaign, it's
11 the same situation that you and Mr. Little were in in
12 the year that you were running. You don't know --

13 COM. FORESE: Thank you.

14 COM. BURNS: -- about that (indiscernible).

15 COM. FORESE: You are now in the same exact
16 position that (indiscernible).

17 COM. BURNS: Well, and I'm not sure what the
18 point is. I mean, if you're --

19 CHMN. LITTLE: The point, Commissioner Burns, is
20 that you've been accusing Tom and I of being under the
21 undue influence of --

22 COM. BURNS: That is an absolute lie.

23 CHMN. LITTLE: I can --

24 COM. BURNS: And I don't know where you're
25 getting that information.

1 CHMN. LITTLE: I can read it in the Clean
2 Election --
3 COM. BURNS: I have not been doing that --
4 voters.
5 COM. BURNS: I have not done that.
6 LITTLE COM. TOBIN: (Indiscernible.) You haven't
7 specifically named names.
8 COM. BURNS: I have not done that.
9 LITTLE COM. TOBIN: But you've made the allusion very
10 clear that you believe that there was regulatory capture
11 that occurred as a result of APS spending -- allegedly
12 spending money in the 2014 election.
13 Now, I don't know who else was running in 2014
14 for the Corporation Commission, besides myself and
15 Commissioner Forese. So you -- if you slice and dice
16 the words --
17 COM. BURNS: If you --
18 CHMN. LITTLE: -- any way you want to, but
19 you've been basically impugning our integrity for a
20 year.
21 COM. BURNS: I have not. I have been protecting
22 your integrity every opportunity I get. When I speak to
23 a group, I tell them that you and Mr. Forese were
24 unaware of where that money came from until after the
25 election, just like everybody else, that you had no --

1 no knowledge of where that money was coming from.

2 CHMN. LITTLE: I want to be very clear. Today,
3 sitting here in this room, I still don't know who spent
4 that money and neither does Commissioner Forese.

5 COM. BURNS: Okay. Well, maybe we ought to find
6 out.

7 COM. TOBIN: The allegations are that it was
8 done by APS. Now, I submit -- and I'm going to go back
9 on this, because I've said this many times before --
10 there were many, many organizations that were business
11 organizations that supported Commissioner Forese and I
12 during our campaign. We were supported by the Arizona
13 Chamber. We were supported by the Home Builders. We
14 were supported by the Southern Arizona Home Builders.
15 We were supported by the Southern Arizona Chamber. We
16 were supported by the Cattle Association. We were
17 supported by the Realtors. Other people could have made
18 those expenditures -- somebody other than APS.

19 But that hasn't been the narrative in the media,
20 and that certainly hasn't been the narrative that you've
21 supported.

22 COM. BURNS: Well, and it hasn't been denied by
23 the APS either. So I think it would be a -- a service
24 to the public to find out what's going on with a
25 regulated utility.

1 And I'm not telling anybody that you're unduly
2 influenced. I'm concerned about the future of who comes
3 to run for the Corporation Commission and how they are
4 perceiving these large sums of money being pumped into
5 these campaigns. I think we end up attracting the wrong
6 kind of people to run for the Commission. And I have
7 over and over said that, in public, on the air waves,
8 that I believe you guys, the two of you actually got in
9 underneath the wire here in this situation where the
10 dark money started flowing to the regulated -- from the
11 regulated utility to the Commission candidates.

12 COM. TOBIN: So we can -- we can start off, if I
13 can interrupt. You don't believe there's any regulatory
14 capture here at the Corporation Commission?

15 COM. BURNS: Not at this point in time, no.

16 COM. TOBIN: Okay. So --

17 COM. BURNS: But I think the potential is
18 extremely possible with -- you know, if the regulated
19 utility -- and it doesn't have to be APS -- it can be
20 any regulated utility -- continues to pump millions of
21 dollars -- and it could be more than 3 or 2 or whatever
22 the amount that was supposedly there, if there's
23 continue -- continue to pump that kind of money into
24 campaigns for regulators, there is a potential to have
25 undue influence acquired by the utility at the risk of

1 the ratepayer. That's the issue to me. I think there
2 is a tremendous risk of that potential happening. So
3 it's --

4 CHMN. LITTLE: Okay. So --

5 COM. BURNS: I believe it's time for us -- it's
6 time for us to find out what's going on. Let's get the
7 record straight. We'll look at all of these guys from
8 the outside. We're not looking just at APS. The
9 investigation, or whatever you want to call it, the
10 review, will take place. And Mr. Hempling is, again,
11 like I said, big picture. He wants to look at the
12 outside influences and how they affect.

13 CHMN. LITTLE: But you can appreciate,
14 Mr. Burns, that you wrote -- this guy does not have a
15 financial or partial -- or partisan interest in our
16 decision. And then you just heard the Chairman say,
17 clearly --

18 COM. BURNS: What guy?

19 CHMN. LITTLE: This is what you wrote about
20 Mr. -- about your investigator, Mr. Scott Hempling. You
21 wrote that he does not have a financial or partisan
22 interest in our decision. That's what you stated.

23 COM. BURNS: I believe that. I don't believe he
24 has an --

25 CHMN. LITTLE: Well, I know you -- I'm sure you

1 believe it, Bob. I'm not saying you don't believe it.

2 I'm saying the Chairman just revealed that this guy

3 works for a company that gave you a --

4 COM. BURNS: He worked for a company some time
5 ago. He works for --

6 CHMN. LITTLE: (Indiscernible) -- a half a
7 million dollars.

8 COM. BURNS: He works for -- he works for a
9 hundred companies.

10 CHMN. LITTLE: That just spent half a million
11 dollars on (indiscernible).

12 COM. BURNS: He has no knowledge of where that
13 money was coming from or who spent it.

14 CHMN. LITTLE: But you can't argue that -- that
15 the Chairman and now others who have just listened to
16 this, shouldn't have some concern when you're trying to
17 say there's a regulatory capture and the first thing
18 we're going to do is hire a lawyer who is tied to money
19 that came --

20 COM. BURNS: Well, if he's --

21 CHMN. LITTLE: -- in the back door to -- to an
22 IE for you. (Indiscernible.)

23 COM. BURNS: Well, if the investigation shows
24 that I have undue influence, I suspect he'll -- he'll --

25 CHMN. LITTLE: He'll investigate himself for

1 (indiscernible)?
2 COM. BURNS: No, not him.
3 CHMN. LITTLE: He's going to investigate you?
4 COM. BURNS: He's going to talk to all of the
5 Commissioners.
6 CHMN. LITTLE: So he's going to investigate you
7 for the hundred -- for a half a million dollars?
8 COM. BURNS: No.
9 CHMN. LITTLE: You see where I'm going with
10 this?
11 COM. BURNS: No, I don't. I don't see where
12 you're going.
13 CHMN. LITTLE: All right. I'm sorry.
14 COM. BURNS: I think you're wandering around
15 looking for straws.
16 CHMN. LITTLE: Well, I'm not really, because --
17 COM. BURNS: Well, I think you are.
18 CHMN. LITTLE: Okay. Well, excuse --
19 COM. BURNS: But then, you know --
20 CHMN. LITTLE: It seems to me --
21 COM. BURNS: I have -- I have the constitutional
22 right, yeah, and the statutory right to hire an employee
23 to do an investigation as a single Commissioner. And I
24 would like to be able to carry out the duty that I swore
25 to do as a constitutional -- I took an oath to do this,

1 so I have a job to do and I'm trying to do it.
2 CHMN. LITTLE: Right. Well --
3 COM. BURNS: And you're try -- and you're trying
4 to block it.
5 CHMN. LITTLE: No, we all took an oath.
6 COM. BURNS: Actually, you're trying to block
7 it.
8 CHMN. LITTLE: Yeah. I -- I -- no. Actually, I
9 think you're completely unprepared to make this
10 announcement on the day ballots go out, that you're
11 going to hire this guy, which is (indiscernible).
12 COM. BURNS: I tried to hire this guy for six,
13 eight months before -- before the election.
14 CHMN. LITTLE: Well, you (indiscernible) six,
15 eight months before.
16 COM. BURNS: No, it didn't work that way.
17 CHMN. LITTLE: Of course, it didn't, because it
18 was an election day.
19 COM. BURNS: Well --
20 CHMN. LITTLE: The ballots went out, Bob. So
21 what I'm saying to you is why (indiscernible).
22 COM. BURNS: You're -- you're -- you're not
23 telling the -- you're not sticking to the facts. The
24 facts are I've been working on this for two years. I've
25 been trying to get the records from APS. I asked for

1 them to voluntarily supply those records. I asked for
2 them -- I ordered them to provide those records. Never
3 happened. Never happened. No cooperation.

4 CHMN. LITTLE: Did you subpoena them?

5 COM. BURNS: So -- I haven't done that. I want
6 to --

7 CHMN. LITTLE: Why don't you do that?

8 COM. BURNS: Well, because what -- what would --

9 CHMN. LITTLE: Why don't you just subpoena
10 (indiscernible)?

11 COM. BURNS: What would be the next Staff
12 meeting if I subpoena, right?

13 CHMN. LITTLE: Well, they're going to probably
14 go to court, probably, so now what you want to
15 (indiscernible).

16 COM. BURNS: So I wanted to try and do this in a
17 better way. I want -- I wanted to try and do this in a
18 better way, so I looked for a different way to do that,
19 rather than to just subpoena and just go to APS only if
20 that's too targeted.

21 Let's look at the big picture. It took some
22 time to figure out a game plan. It took some time to
23 find the right person to do this. So that's what
24 happened. I mean, it -- it drug out and it drug out and
25 it drug out. And I would have loved to have this done

1 months ago.

2 CHMN. LITTLE: Well, on the other hand, you
3 could have -- you're saying, let's hire Mr. Hempling, he
4 can go and subpoena Pinnacle West, which is what you're
5 hoping for.

6 COM. BURNS: He could -- he could go and use a
7 subpoena.

8 CHMN. LITTLE: And they're going to put us in
9 court. So now --

10 COM. BURNS: And --

11 CHMN. LITTLE: So now, okay, so I mean, either
12 way, you're going to court. Why don't you just subpoena
13 (indiscernible) and save us all the aggravation and
14 spending the money and going no further?

15 COM. BURNS: Well, why -- why -- why don't we do
16 it right? Why don't we do it right and use -- and use
17 an expert? You hired an expert to do your lien program.

18 CHMN. LITTLE: You hired an expert.

19 COM. BURNS: Well --

20 CHMN. LITTLE: I brought it to this
21 (indiscernible).

22 COM. BURNS: And I voted to support that.

23 CHMN. LITTLE: Thank you. You voted on my
24 amendment to (indiscernible) I appreciate it.

25 COM. BURNS: And I have the -- I have the

1 authority as an individual Commissioner, based on the
2 constitution and the law, and that's what I'm trying to
3 do. I'm trying to do the --

4 CHMN. LITTLE: Well, do I not have the -- do I
5 not have the authority to bring to this Commission's
6 attention, this Item 3?

7 COM. BURNS: Yeah.

8 CHMN. LITTLE: All right. And that's all I did.

9 COM. BURNS: And you said you weren't going to
10 block it. I asked you when we were at the debate.

11 CHMN. LITTLE: I'm not -- I didn't say --

12 COM. BURNS: And you said you weren't going to
13 block it.

14 CHMN. LITTLE: I said I wanted to expand on it.
15 This is what --

16 COM. BURNS: Well, and I've offered you the
17 opportunity to do that.

18 CHMN. LITTLE: And I said, then just vote for
19 the amendment.

20 COM. BURNS: No.

21 CHMN. LITTLE: Well, that's what does it.

22 COM. BURNS: You can meet -- you can meet with
23 a -- with a man that already has a contract that we have
24 signed a contract with. He's willing to talk to you.

25 CHMN. LITTLE: Well, but you hired who I now

1 believe and agree with the Chairman is a mistake because
2 of what we just said. And I think you -- the public
3 should see that there's some -- that this clearly is not
4 somebody who has no interest in this (indiscernible)
5 especially in the solar (indiscernible). So it's odd,
6 Bob. That's all I'm saying.

7 CHMN. LITTLE: And Bob, just to go back to your
8 statement before, I'm going to read from -- this is --
9 I'm reading directly from the Clean Elections Candidate.
10 This is the Candidate's statement pamphlet from the
11 primary election. This is the -- the information that
12 is below your name. I assume that you have
13 responsibility for the content of this.

14 It says: A key responsibility of the
15 Corporation Commission is to provide oversight and
16 regulation of power and utility providers for Arizona
17 residents. In the 2014 elections, it is believed that a
18 certain utility spent over \$3 million to support their
19 favorite candidates for the Corporation Commission.
20 This campaign activity was hidden behind political
21 nonprofit so ratepayers like you would have no idea that
22 utilities were actively trying to choose their own
23 regulators.

24 Now, if that is not telling somebody in public
25 that I am a pawn of APS --

1 COM. BURNS: I don't see that written -- I don't
2 read that that way.

3 CHMN. LITTLE: Bob, that is the most
4 disingenuous thing you have said to me ever in my life.

5 COM. BURNS: I mean, (indiscernible) see what
6 you've got there (indiscernible).

7 CHMN. LITTLE: It's right here. It's -- it's
8 the Candidate guide.

9 COM. BURNS: (Indiscernible) let me see it.

10 CHMN. LITTLE: It's right there. That -- that
11 particular document was mailed to every voter in the
12 state of Arizona.

13 COM. BURNS: Well, I think you're overreacting
14 here. I -- I think you're -- you're --

15 CHMN. LITTLE: I -- I -- my -- my father once
16 told me that a man only has his integrity; and without
17 his integrity, he is nothing. And you've basically
18 challenged my integrity. You (indiscernible) --

19 COM. BURNS: I did not challenge your integrity.
20 I challenged the integrity of APS.

21 CHMN. LITTLE: So --

22 COM. BURNS: APS is the one that's put the cloud
23 over this Commission and over your candidacy, and -- and
24 not --

25 CHMN. LITTLE: And -- and -- and --

1 COM. BURNS: It's not your fault.

2 CHMN. LITTLE: Commissioner Burns, I want you to
3 present one piece of evidence that APS spent any money
4 on the campaign at all, one.

5 COM. BURNS: Give me this investigator and I
6 might be able to find that evidence. And then the
7 public --

8 CHMN. LITTLE: You can do it without spending a
9 hundred thousand dollars of the taxpayers' money on what
10 I consider to be a wild goose chase.

11 COM. BURNS: Well, I don't consider it a wild
12 goose chase. And I've had a lot of people that have
13 told me that it's not a wild goose chase and that I
14 should proceed. And I have the constitutional authority
15 to proceed, and I intend to proceed.

16 CHMN. LITTLE: So --

17 COM. BURNS: And so, if you block this, to me,
18 you're basically taking away my authority as an
19 individual Commissioner to do my job.

20 CHMN. LITTLE: So your individual authority is
21 certainly something that I would not restrict you from
22 or strip from you, however --

23 COM. BURNS: Well, I wouldn't hope so, because
24 you have the same authority.

25 CHMN. LITTLE: However, when we make an

1 expenditure of funds, I believe -- and I would be
2 looking for a legal opinion here, Ms. Wagner, and if we
3 need to go into executive session to discuss it, we
4 can --

5 COM. BURNS: Not according to the --

6 CHMN. LITTLE: -- but I believe that if we were
7 to be looking at an expenditure of Corporation
8 Commission funds with an external organization, that the
9 Commissioners could vote to either approve or defund
10 something if they chose to.

11 And I would be curious about your legal opinion
12 on that.

13 MS. WAGNER: Mr. Chairman, members of the
14 Commission, Janet Wagner for the Legal Division.

15 It's a difficult meeting. You're correct, the
16 way that you would move forward, if that is your desire,
17 would be to indicate that the allotment of the
18 Commission's budget would not be available for this
19 purpose.

20 CHMN. LITTLE: Now, Commissioner Burns, this
21 does not prevent you from doing it, because as I
22 understand it, you have an office budget that you
23 control the expenditure of your own office budget. And
24 you could disburse funds from your own office budget to
25 retain this attorney, if you chose to do so.

1 So we're not essentially preventing you from
2 moving forward with this, because if you look at the
3 constitutional authority that you have, it says that you
4 can use your Staff or other individuals that you might
5 retain and you have control of that office budget. You
6 have the ability to disburse that office budget as you
7 see fit. So if you want to spend your own office
8 budget, I would say that would be fine with me.

9 COM. BURNS: And you realize, of course, very
10 well, that that office budget would not cover the cost
11 of this investigation. So that would be a moot point.
12 And so --

13 CHMN. LITTLE: Well, sir, you also have the
14 opportunity to -- and -- and -- you know, I'm sure that
15 you could solicit contributions to a legal fund that
16 would -- would potentially fund it.

17 COM. BURNS: Well, I guess a couple of things.
18 I find it sort of odd that an investigation into the
19 potential undue influence on Commissioners, and not the
20 Commissioners sitting here presently, but Commissioners
21 in the future, isn't a problem. You don't see that as a
22 problem.

23 And so it's -- it just -- to just flat out
24 refuse to examine that possibility, just to do an
25 investigation to determine if there's the potential for

1 that to happen, to put the ratepayers of the state of
2 Arizona at risk at having an unfair advantage when it
3 comes time for rate setting, because of the influence
4 that a utility -- and I'm -- it doesn't have to be APS,
5 it could be any utility -- could gain undue influence by
6 spending millions and millions of dollars in an
7 election, I just don't get it that you are not concerned
8 about that.

9 CHMN. LITTLE: So can --

10 COM. BURNS: Now, if it's -- if, for some
11 reason, this whole thing has turned to the point where
12 you believe I am attacking you, that is not true;
13 absolutely not true. I have tried to tell everybody
14 I've talked to that you guys did not know where the
15 money was coming from. It was an independent
16 expenditure, and by law you couldn't know. And so you
17 guys got in under the wire, in my opinion, on this whole
18 situation.

19 But in the future, in the future, if people
20 believe that a utility is going to spend millions of
21 dollars on their behalf in an election, what kind of
22 people are we going to attract to this Commission? I
23 think it has the potential of -- of corrupting the
24 Commission. And so I think we need to do something
25 about it.

1 CHMN. LITTLE: Commissioner Burns.

2 COM. BURNS: And the way we do something about
3 it is we examine what's going on in -- in -- in the 2014
4 and beyond with the outside influences on the
5 Commission.

6 CHMN. LITTLE: So perhaps I'm just a
7 glass-half-full guy and maybe you're a glass-half-empty
8 guy, because I believe that people seek public office in
9 order to do public service. That is why I sought
10 political office, to do public service.

11 COM. BURNS: As I did.

12 CHMN. LITTLE: And -- let me -- let me finish.

13 COM. BURNS: But there are people that are in
14 public office that did not seek public office
15 (indiscernible).

16 CHMN. LITTLE: So you can go and you can do the
17 research. There was a -- a significant Supreme Court
18 case in 2010 called Citizens United, and the Supreme
19 Court was very clear in their decision on this. They
20 believe that corporations are allowed to have political
21 speech. And they believed -- and it's stated very
22 clearly in that opinion -- that political speech --
23 spending money on a desired candidate or a desired
24 ballot proposition or some referendum, spending money on
25 behalf of that was considered political speech.

1 Now, the Court also went to great lengths to say
2 that by simply contributing to a particular candidate or
3 a particular ballot proposition, that that was not
4 considered to be, on its face, evidence that there would
5 be undue influence on that particular elected official.

6 You can go back and read the law.

7 COM. BURNS: Well, and you can also go back and
8 listen to some of the statements of some of those
9 Supreme Court Justices after that case, where they
10 pointed out that there ought to be disclosure, that
11 there should be disclosure.

12 CHMN. LITTLE: And if you go back and look at
13 the majority opinion -- and I believe it was written
14 by -- I honestly don't remember, and I don't want to
15 misstate -- the majority opinion basically said that
16 forced disclosure in this particular instance would have
17 a chilling effect on a corporation or an independent
18 group's ability to participate in the process.

19 Because, you know, here's the situation you run
20 into. Let's say a corporation -- let's say a water
21 company is supportive of a candidate. And let's say,
22 just for the sake of argument, that candidate is
23 pro-choice, and many of the customers of that water
24 company are pro-life. If they were to find through
25 disclosure that their preferred water company was

1 pro-choice, they may actually not want to do business
2 with that water company because they don't agree with
3 the political choice that water company made.

4 Is that fair to the water company? No, it's
5 not. Just like it's not --

6 COM. BURNS: Well, wait a minute, wait a minute.
7 We're dealing with monopolies here who have a captured
8 clientele.

9 CHMN. LITTLE: I'm talking about a regulated
10 monopoly.

11 COM. BURNS: That's right.

12 CHMN. LITTLE: I'm talking about one of our
13 regulated water companies.

14 COM. BURNS: And so the water company customer
15 is going to walk away because he doesn't like the
16 politics of the water company? I don't think so.
17 There's a difference between the nonregulated --

18 CHMN. LITTLE: They may not walk away --

19 COM. BURNS: -- the nonregulated corporation and
20 the regulated corporation.

21 CHMN. LITTLE: They may not walk away,
22 Commissioner. But they -- the relationship -- it would
23 be tainted. And this is precisely the reason that the
24 Court found as it did. And -- and when we had this
25 brouhaha back in September of this past year, I received

1 numerous phone calls from numerous companies after they
2 were in receipt of your letter and the letter that
3 Commissioner Bitter Smith send out, saying basically,
4 does this mean that if we don't do what this letter
5 says, that we're going to be on the political bad list
6 at the Commission and our decisions are not going to be
7 viewed in a favorable manner? They felt like it was
8 blackmail.

9 COM. BURNS: Well, I'm sorry that they felt that
10 way. It certainly was not. It was a notice and a
11 request for them to voluntarily stay out of the
12 elections.

13 CHMN. LITTLE: Come on. A request from a
14 sitting regulator?

15 COM. BURNS: And they -- and every -- and -- I
16 think we can do requests.

17 CHMN. LITTLE: That regulates them? Really?

18 COM. BURNS: I think we can do requests, yes, I
19 think we can. And we did. And I'll tell you that the
20 responses we got from the major utilities, Southwest
21 Gas, TEP, UNS, was all that they would voluntarily stay
22 out. The only major utility, regulated utility, that
23 did not respond and say that they would stay out was
24 APS.

25 CHMN. LITTLE: Commissioner Burns, you realize

1 that your letter -- and -- and this is shocking to me
2 for someone who claims to be a Republican -- your letter
3 basically asks those companies to abandon their first
4 amendment right.

5 COM. BURNS: No way. No way.

6 CHMN. LITTLE: Does -- does anybody else --

7 COM. BURNS: Nobody said -- no -- nobody said
8 they couldn't spend in the election. We still haven't
9 said that. I have not said that. I have repeatedly
10 said, when I talk to groups, the utility has the
11 constitutional right based on a Supreme Court order to
12 contribute to campaigns.

13 The issue is that they need to report. And why
14 are they so reluctant to report? Who is going to
15 retaliate against the utility that has a captured
16 clientele? They're not going to take their business
17 somewhere else. They can't. So the idea that they're
18 going to retaliate against -- and I -- I am opposed to
19 the retaliation that takes place against the
20 nonregulated corporations. I think it's terrible. I
21 think it's wrong. You've got people out there. You've
22 got groups that go out there and hire demonstrators who
23 boycott the companies and so forth. I think that's
24 wrong and needs to be addressed.

25 But the -- the regulated corporation is

1 completely different, completely different. It's two
2 different structures. And so the regulated
3 corporation -- the customers are captured. They have no
4 other choice. They rely completely on the regulator to
5 make sure that they get a fair return or a fair rate.
6 And so if the regulator becomes unduly influenced by
7 whatever means -- and -- and they -- Mr. Hempling is not
8 focusing on just the election part of it; there are
9 other means of gaining undue influence -- and so he
10 was -- part of the study was to look at a number of
11 different things to make sure that that's not happening
12 or to advise us on how to prevent it from happening in
13 the future now that we have these millions and millions
14 of dollars being thrown at Corporation Commission
15 races --

16 CHMN. LITTLE: Commissioner Stump.

17 COM. STUMP: Thanks. Bob, you know, Tom and
18 Doug have been smeared for two years. And I've been
19 smeared for over a year by Checks and Balances, funded
20 by Solar City, in part. And I agree with you when you
21 (indiscernible).

22 COM. TOBIN: -- I'm new to the smearing.

23 COM. STUMP: Yeah. Well, no, you've --
24 you've -- well, there's irony in that, too, because you
25 talk about -- or not you, but in general people talk

1 about unregulated or regulated utilities versus entities
2 that aren't regulated by us.

3 And I found it curious, Commissioner Tobin, in
4 your case, that suddenly when you -- your political
5 opponents say you have a conflict, suddenly Solar City
6 becomes important. In every other instance they're not
7 regulated by us, so whatever they do is beyond reproach.

8 Anyway, that's neither here nor there. But
9 Commissioner Burns, I appreciated you saying on the
10 Horizon debate that we're dealing with false perceptions
11 that, in my opinion, that have been actually perpetuated
12 for crass political purposes to try to cast a pall over
13 the Commission to damage all of us.

14 So if it's a perception problem and Tom and Doug
15 are lily white, as indeed they are, and there's no
16 corruption at the Commission, then my question simply
17 is, what is there to investigate?

18 And I understand the forward-looking nature of
19 your inquiry, as you describe it. But unless there's a
20 structural, inherent pattern of influence that's built
21 into our processes down here that applies to future
22 Commissioners, I don't know how you investigate
23 something like that. So that was my concern and you
24 don't investigate a false perception. You dispel it.

25 So, you know, I thought perhaps, you know, if

1 there's an unfair perception, a public education
2 campaign would be a better use of funds to try to
3 explain our processes to the public, to indeed enable
4 them to understand the issue of due process and how each
5 of us strives to serve the public interest and set just
6 and reasonable rates.

7 But my view -- and I would love to get your
8 thoughts on this -- if it's a false perception that's
9 not true, by definition, and you agree, as all of us do,
10 that Tom and Doug are good men who have been severely,
11 unfairly attacked by, quite frankly, not only moronic
12 op-eds in some papers, but by a dark -- in my case a
13 dark-money group funded by a nonregulated entity that
14 has business before the Commission.

15 So I'm just trying to understand, if it's a
16 perception problem that's -- that's simply a will o' the
17 wisp, as I said last week, how do we -- why don't we try
18 to dispel that? And maybe your argument is that this
19 investigation would dispel it.

20 COM. BURNS: I believe it would.

21 COM. STUMP: But --

22 COM. BURNS: Or I believe it could. I don't
23 know what it would -- I mean, I don't know what the
24 results of the investigation will end up being.

25 COM. STUMP: But --

1 COM. BURNS: But I think it's -- it's -- it's
2 the tool that we need to use to make the public -- give
3 the public some confidence that we are what we say we
4 are. And I -- I think the -- the issue that you bring
5 up about the investigation against you -- or not the
6 investigation -- the attack against you, I think this is
7 something that this man could look into as well. It's
8 all part of the deal here that --

9 COM. STUMP: But -- yeah. But it -- but they're
10 trying to exert undue influence, but obviously they
11 didn't succeed. You know, the company, quite frankly,
12 in my opinion, that funded them was trying to intimidate
13 regulators in Arizona and around the country. And this
14 group, Checks and Balances, continues to operate in
15 spite of Solar City's assurance that they are not
16 funding them. But they did unleash the Kraken, as it
17 were. And so they're trying to exert undue influence,
18 but because I have integrity, Tom does, all the
19 Commissioners, I believe, have integrity, they're not
20 getting anywhere.

21 APS, it's been until they're blue in the face,
22 they're not going to get anywhere. So if it's -- with
23 that in mind and the fact that it's an unfortunate
24 perception that they would, how do we proceed with an
25 investigation? And what is the end result?

1 You know, okay, well, let's say it's proven that
2 APS or other entities spent something. We maybe
3 confirmed our prejudices, but it doesn't mean that they
4 had any influence on these good men. It just meant they
5 spent money. We -- our suspicions were confirmed, so
6 that -- that's my confusion.

7 COM. BURNS: Well, but they -- I believe they
8 had a -- they certainly had influence on the election,
9 quite --

10 COM. STUMP: Well, sure. And --

11 COM. BURNS: And -- and -- and the perception
12 that you talk about, I mean, the perception in the
13 public, I -- how can you say that the public has a good
14 perception of this body?

15 Now, when I'm out campaigning, people come up to
16 me and say, you guys are bought and paid for. That's
17 part of the public perception that needs to be changed,
18 that we need to get -- get rid of. We need to
19 understand -- get people to understand --

20 MALE SPEAKER: Bob, they said --

21 COM. BURNS: That isn't happening.

22 MALE SPEAKER: -- (indiscernible) when you were
23 president of the Senate.

24 COM. BURNS: Well --

25 MALE SPEAKER: They did. I mean --

1 COM. BURNS: You keep dragging all of these --
2 off the --

3 MALE SPEAKER: Well, I'm sorry. I was there,
4 you know.

5 COM. BURNS: Well --

6 MALE SPEAKER: I just thought I would mention
7 it.

8 COM. STUMP: And -- and the reason -- and that
9 is -- that is -- that saddens me.

10 COM. BURNS: Yeah.

11 COM. STUMP: It's a -- it's a sadly cynical
12 response based on frankly the -- that is -- really was
13 caused by the efforts of, frankly, in my view, monomania
14 about the effects of a utility's alleged dark money
15 spending to corrupt men that I know are good men.

16 And if we don't like dark money -- I'm not a
17 huge fan of it -- why don't we go to the legislature or
18 seek other legal means to try to change the law?
19 Because going forward, an investigation will say, well,
20 okay, the utility did spend it. And then what are we
21 left with? The perception is -- the false perception is
22 still there.

23 I guess there's no nexus between the fact that,
24 okay, let's say we prove the utility spent it, fine.
25 There's still no nexus to that spending to the character

1 of Tom and Doug or any other commissioners.

2 Does that make sense?

3 COM. BURNS: I agree. I agree with you. But
4 there's -- there's -- the problem is with -- at the
5 election. All right. The -- the utility has the right
6 to spend. They can go ahead and spend. But when they
7 spend, they need to report. There needs to be a
8 reporting process.

9 COM. STUMP: That's (indiscernible). Sure.

10 COM. BURNS: I believe that's our
11 responsibility. It's not the legislature's
12 responsibility. We have the responsibility to regulate
13 utilities. You saw what happened here.

14 CHMN. LITTLE: And under no portion of the
15 constitutional authority of this body is there anything
16 that says that we have to compel disclosure of election
17 spending on the part of our utilities. There's nothing
18 in there that says that. Nothing.

19 COM. BURNS: No. We don't have to. But we can.

20 CHMN. LITTLE: No, we can't.

21 COM. STUMP: We don't have that authority is --

22 CHMN. LITTLE: We don't have that authority. We
23 can open -- we can ask them to open their books, if we
24 believe that there is a substantial nexus --

25 COM. BURNS: Well, that's a form of reporting, I

1 would say.

2 CHMN. LITTLE: You didn't let me finish.

3 COM. BURNS: Well --

4 CHMN. LITTLE: We have the authority to open
5 their books, but the purpose we use to open their books
6 is to understand whether or not there is an -- any
7 impropriety that exists in the rate making process.
8 It's not something that we have the ability to do.

9 We can't actually go and say to some company, we
10 want to understand how you spent your lawfully earned
11 profits. That is protected speech. That is protected
12 by the first amendment.

13 So, you know, I think we're -- we're at a spot
14 where, you know, we're -- we're starting to -- to move
15 around in circles.

16 COM. BURNS: Well, I guess we might -- we might
17 as well bring this to a close. I see where you guys are
18 going. You're going to defund --

19 CHMN. LITTLE: Well, first of all, I want to
20 make sure that --

21 COM. BURNS: -- and so -- you know --

22 CHMN. LITTLE: -- Commissioner Forese --
23 Commissioner Forese, you still on the line?

24 MALE SPEAKER: I think he had to drop off.

25 So --

1 COM. BURNS: So you're going to vote to defund.
2 So I think the next question would be then if
3 I'm going to do the subpoenas that I'm authorized to do,
4 I'd like to have Staff at the Commission here to help me
5 prepare those subpoenas so that I can move forward in
6 sort of a "stumble along" instead of a well-organized
7 effort, it will be not so well organized.

8 CHMN. LITTLE: So let -- let me -- let me just
9 summarize where I think we're at, okay, and -- and I
10 would appreciate the input from all of you.

11 There's a -- a question -- and -- and
12 Commissioner Tobin referenced this, there could be
13 rationale for pursuing some sort of project or
14 evaluation or examination -- and -- and the reason I
15 don't like to use the word "investigation", because
16 it -- to me, the investigation word implies improper
17 behavior. And to me there is no evidence of any
18 improper behavior, number one.

19 COM. BURNS: Because of no investigation, maybe.

20 CHMN. LITTLE: So --

21 COM. BURNS: (Indiscernible) make a point. I
22 mean, you know --

23 (Indiscernible - simultaneous speech.)

24 COM. BURNS: You don't investigate, you don't
25 know.

1 CHMN. LITTLE: Gentlemen, let me finish, let me
2 finish.

3 So Commissioner Tobin has said he would be
4 potentially willing to consider a project, but that
5 Mr. Hempling because of any -- to me, any remote
6 connection that would indicate that he was not an
7 impartial person, it would have to be somebody else. Or
8 we could say, nope, we're not going to fund this or any
9 other project of this type. And if you wish to pursue
10 it, you can pursue it using your own office budget and
11 your own Staff and that the legal Staff of the
12 Commission under your authority would be in a position
13 where they would issue subpoenas.

14 I believe that would be correct, would it not,
15 Ms. Wagner?

16 MS. WAGNER: Mr. Chairman, technically the
17 Executive Director's office issues subpoenas.

18 CHMN. LITTLE: But that Staff would assist in
19 the preparation of those subpoenas and they would be
20 issued by the Executive Director. Okay. So -- so I
21 think there are different choices. I -- I'd be curious,
22 based on this discussion, what the thoughts of
23 Commissioner Tobin and Commissioner Stump are, relative
24 to how they would like to move forward.

25 COM. TOBIN: Well, Mr. Chairman, I still like

1 my -- my Item Number 3. I think what it does is
2 redirect the Executive Director to go meet with all --
3 with all of the Commissioners -- the Commissioners, and
4 identify the top 5, 10 needs that we want to have
5 reviewed.

6 I have significant issues over secured -- I have
7 significant issue -- you talk about regulatory capture.
8 It's not just us. We have Staff who negotiates our --
9 our stuff. Are they supposed to be included? We
10 have -- they're included in this (indiscernible).

11 COM. BURNS: And that's what I'm saying.

12 COM. TOBIN: So maybe they -- maybe we need to
13 have this broadened. But I have issues with respect to
14 the priorities, the process. I have issues with
15 procedures here. I have issues with rules. I think we
16 direct -- you know, I mean, I think it's pretty cut and
17 dry what my statement says. Jodi goes around, meets
18 with all the Commissioners, gets their top 10
19 priorities, puts together a scope of work. We go out
20 for an RFP and let's go hire somebody if we -- if --
21 with our -- our top 10 list or top 5, whatever we can
22 afford to --

23 COM. BURNS: Well, based on the requirements of
24 the person to investigate, I -- I doubt that you'll find
25 one. You won't find one better than this gentleman

1 here. And if you're going to find one --

2 (Indiscernible - simultaneous speech.)

3 COM. BURNS: If you -- if you find somebody that
4 has the expertise and the ability to do the job that
5 we've prepared here, they're going to probably have some
6 connection with some utility, some solar company, some
7 other -- throughout the -- the industry. That's the
8 way -- the way these people work. I mean, they work for
9 a lot of different people. So I -- I --

10 MALE SPEAKER: I -- I just have to say,
11 you're -- you're telling me that in all the world, there
12 is only one lawyer that can do this job. That's just --

13 COM. BURNS: No. That's not what I said.

14 MALE SPEAKER: It sort of sounded like that.

15 COM. BURNS: I wish you could -- well, I'm
16 telling you that he's one of the best. I didn't say
17 he's the only one. He's one of the best, and -- and
18 I -- I challenge you to find one better, and then find
19 one without any connection whatsoever.

20 MALE SPEAKER: Well, he (indiscernible) have him
21 bid.

22 COM. BURNS: Well, he doesn't have --

23 MALE SPEAKER: Have him bid on the process.
24 Maybe you're right.

25 COM. BURNS: The man doesn't even have to bid.

1 He's -- he's got enough people coming to his door to get
2 his -- to -- to have him work. He doesn't have to
3 (indiscernible).

4 MALE SPEAKER: Well, I was in business all my
5 life. I bid on everything, and I thought I was the best
6 going forward too. So --

7 COM. BURNS: Well, I can -- I can believe you
8 thought you were the best.

9 MALE SPEAKER: I tried.

10 MALE SPEAKER: (Indiscernible) Tobin, I
11 entertain a motion.

12 MALE SPEAKER: I'd like to move my --

13 COM. BURNS: Well, I'd like to know something
14 here first, before this.

15 CHMN. LITTLE: Um-hmm.

16 COM. BURNS: I want to make sure that I
17 understand that Staff is available here at the
18 Commission for me to move forward. I don't intend to
19 delay another month, 2 months, 6 months. I've been on
20 this for 2 years. I intend to move forward.

21 MALE SPEAKER: Well, go ahead.

22 COM. BURNS: And so I want to be assured that I
23 have at least the Staff available for me to use.

24 MALE SPEAKER: Well, Mr. --

25 COM. BURNS: And then the other question is, if

1 I get a subpoena, are you going to squash it here? I
2 mean, are we going to have a Staff meeting and squash
3 it?

4 MALE SPEAKER: Well, Mr. Burns, first off, none
5 of that's on the -- on the agenda. But you heard
6 counsel will give you advice.

7 COM. BURNS: What do you mean it's not on the
8 agenda?

9 MALE SPEAKER: You just said -- you wanted me to
10 assure you that I would vote some way for -- for
11 something. I'd say, well, that's not on the agenda here
12 going forward. This is the piece that's on the agenda.
13 I mean, you just asked me -- you said, I want to be
14 assured going forward that if I -- I subpoena, I'm going
15 to do something. I'm like, that -- first it's not on
16 the agenda. Second, I don't even know what that means.

17 COM. BURNS: Well, I think there's been a few
18 things discussed that weren't on the agenda from both
19 sides of the table, quite possibly.

20 MALE SPEAKER: Well, well, I (indiscernible).

21 COM. BURNS: So I mean, if that's a --

22 MALE SPEAKER: (Indiscernible) back into the --
23 to the point, and it's Item Number 3.

24 COM. BURNS: And it's defund.

25 MALE SPEAKER: You can call it whatever you

1 want, you know.

2 COM. BURNS: I mean, the result is, it's defund.

3 MALE SPEAKER: Well, no, you just --

4 MALE SPEAKER: I just -- I want that to be

5 clear. I want people to understand.

6 MALE SPEAKER: It seems -- it seems that you

7 heard from counsel that she -- they said they could

8 issue your subpoena for you, so --

9 COM. BURNS: Okay.

10 MALE SPEAKER: And maybe you don't have -- you

11 should have done that six months ago.

12 COM. BURNS: Well, I was trying to do it a

13 better way.

14 MALE SPEAKER: Well, you --

15 COM. BURNS: Include -- I was trying to include

16 all of the Commissioners.

17 MALE SPEAKER: Well, this -- well, you didn't on

18 this scope of work, did you?

19 COM. BURNS: Yes, we did, on that scope of work.

20 MALE SPEAKER: You included all of these

21 Commissioners on this --

22 COM. BURNS: On the scope of work, the first

23 thing to happen would be interviews with all of the

24 members, all of the Commissioners --

25 MALE SPEAKER: It's to --

1 COM. BURNS: -- to find out what they would like
2 to have done.

3 MALE SPEAKER: So hire him and then do the scope
4 of work.

5 MALE SPEAKER: So just -- just to be clear.

6 MALE SPEAKER: That's what you just said --

7 MALE SPEAKER: Just to be clear -- I want to be
8 very clear about this. Just to be clear, I was handed
9 the scope of the work for this after the contract was
10 signed. I did not see the scope of work for this in
11 advance of the contract being signed, the scope of work
12 being written. I was never consulted about the scope of
13 work. It just magically appeared on my desk on Tuesday
14 morning, the day before early ballots went out.

15 COM. BURNS: At the authority of an individual
16 Commissioner that has the authority to do this, so, you
17 know.

18 MALE SPEAKER: Just making a point that this was
19 not something that all of us were involved in. This was
20 a project that you prepared on your own --

21 COM. BURNS: But nobody -- nobody here knew that
22 I was in the process of doing this, of course. I mean,
23 I asked for an attorney general's opinion to verify that
24 I had the authority to do this on my own. So you -- you
25 all didn't understand that that's what I was doing? I

1 mean, what else would -- what else was it? I mean, it's
2 been known --

3 MALE SPEAKER: Go file your -- go file your
4 subpoena, Bob. It's -- I've said that 10 times. Go
5 file it.

6 COM. BURNS: Well --

7 MALE SPEAKER: I'm not stopping you. I -- I --

8 COM. BURNS: Yeah, you are. You're -- you are
9 stopping me.

10 MALE SPEAKER: (Indiscernible.)

11 COM. BURNS: You're stopping me. Yes, you are.
12 You're -- you're -- you're stopping a well organized --

13 MALE SPEAKER: I'm not stopping you -- who is
14 organized?

15 COM. BURNS: -- scope of work.

16 MALE SPEAKER: By who?

17 COM. BURNS: Part of this -- this -- we have
18 somebody that has the knowledge and the expert -- and
19 experience to lay out a scope of work that gets the job
20 done. And that's what we used, okay? So --

21 MALE SPEAKER: That's why any government they
22 have what's called RFPs, where everybody has --

23 COM. BURNS: And they have in government -- they
24 also have in government individual Corporation
25 Commissioners can act to protect the ratepayer.

1 MALE SPEAKER: Which is exactly what I'm doing
2 here today in Item 3. Just like you (indiscernible).
3 COM. BURNS: Yep. You're -- you're -- you're
4 just -- you're stopping my ability to do my job.
5 MALE SPEAKER: I don't think so.
6 COM. BURNS: Oh, yes, you are.
7 MALE SPEAKER: I just invited you to do it.
8 I'd like to move my Item 3.
9 CHMN. LITTLE: Commissioner, Item 3 has been
10 moved. I think we've had adequate discussion on it.
11 MALE SPEAKER: Yeah.
12 COM. BURNS: Well, actually, he's tried to stop
13 me before. I mean, before we got the attorney general's
14 opinion, there was a move to try and stop me.
15 MALE SPEAKER: For what?
16 COM. BURNS: So -- huh?
17 MALE SPEAKER: What did I do before?
18 COM. BURNS: You had it on the agenda. You've
19 had it on the agenda -- this is the third time you've
20 put something on the agenda that would have attempted to
21 stop my progress.
22 MALE SPEAKER: Well, anything (indiscernible).
23 COM. BURNS: Well, we'll -- we'll get it back --
24 we'll get it for you.
25 MALE SPEAKER: Okay. (Indiscernible) send it my

1 way.

2 COM. BURNS: All right, yeah, yeah.

3 CHMN. LITTLE: Well, there's -- there's a
4 question on the table. I think I'm going to ask that
5 each individual Commissioner be polled.

6 MS. WAGNER: Mr. Chairman.

7 CHMN. LITTLE: Yes, Ms. Wagner.

8 MS. WAGNER: I'm sorry, so sorry to interrupt.

9 Item 3 has two parts to it. I was just -- it
10 might be helpful to clarify the first part and the
11 second part.

12 CHMN. LITTLE: Thank you, very much, Ms. Wagner.

13 Okay. So we have Commission discussion,
14 consideration, and possible vote on whether to allocate
15 funds from the Commission's budget for payment in
16 furtherance of the scope of work associated with the
17 August 2nd contract with outside counsel; or,
18 alternatively, to suspend the allocation of funds for
19 that contract pending submission of a revised scope of
20 work in consultation with each Commissioner and present
21 to the Commission for consideration within 45 days.

22 So Commissioner Tobin, which of the two are you
23 proposing?

24 COM. TOBIN: That alternatively -- after
25 alternatively, move forward, suspend the allocation

1 immediately for the contract pending submission of a
2 revised scope of work to be developed by the Executive
3 Director in consultation with each Commissioner and
4 present it to the Commission for consideration within
5 45 days.

6 CHMN. LITTLE: Okay. So we're voting to suspend
7 the allocation of funds for the contract pending with
8 Scott Hempling. And we're directing the Executive
9 Director, in consultation with each Commissioner, to
10 develop a revised scope of work to be presented to the
11 Commission for consideration within 45 days.

12 Commissioner Tobin, how do you vote?

13 COM. TOBIN: (Indiscernible.)

14 CHMN. LITTLE: Commissioner Stump, how do you
15 vote?

16 COM. STUMP: Mr. Chairman, may I explain my
17 vote?

18 CHMN. LITTLE: You may.

19 COM. STUMP: I just want to reiterate there's no
20 integrity problem in this Commission. There is a
21 perception problem. And it is as simple as that.

22 And I vote aye.

23 CHMN. LITTLE: Commissioner Burns, how do you
24 vote?

25 COM. BURNS: I'd like to explain my vote.

1 CHMN. LITTLE: You may.

2 COM. BURNS: I think this is just a disguised
3 action to deny me the opportunity to do my
4 constitutional duty of protecting the ratepayer, in this
5 case from undue influence by utility overspending and
6 overparticipating, if you will, in the elections of
7 Corporation Commissioners.

8 I think the perception problem will always --
9 will continue to remain because we have failed to
10 address it. The way to get rid of the perception is to
11 get the facts and to take a path of corrective action as
12 opposed to blocking the effort to do so.

13 And I vote no.

14 CHMN. LITTLE: For my own vote, I think my
15 commissions have been very clearly expressed.

16 But to quickly reiterate, I believe that there
17 is absolutely no evidence of any untoward influence on
18 the part of any external stakeholders on this Commission
19 or the Commission Staff.

20 I believe this is a waste of taxpayer money,
21 should we have -- if we would have spent it.

22 I believe that the functioning of this
23 Commission is exemplary and should be held up as an
24 example of one of the finest Commissions in the country.

25 And I -- I am just very frustrated with the

1 continued narrative that -- that has been presented that
2 there is something wrong here and that there is somehow
3 anything other than absolute integrity at this
4 Commission.

5 And with that, I vote aye.

6 Commissioner Forese, I don't believe is on
7 anymore. So his -- he's been excused.

8 Having exhausted the agenda --

9 COM. TOBIN: I forgot to mention the budget
10 process while we're looking. Did we -- is it too late?
11 Okay. I wrote my note and I forgot. Okay. Never mind.

12 THE COURT: All right. Thank you very much.

13 The -- the agenda is completed, and this meeting
14 is adjourned.

15

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Exhibit No. 10

ORIGINAL

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION
COMMISSION



Direct Line: (602) 542-0745
Email: DLittle-web@azcc.gov

February 22, 2016

Mark Brnovich
Arizona Attorney General
1275 W. Washington St.
Phoenix, AZ. 85007

Arizona Corporation Commission
DOCKETED

FEB 22 2016

Re Docket: AU-00000A-15-0309



RECEIVED
AZ CORP COMM
DOCKET COMM
2016 FEB 22 PM 4:11

Dear Attorney General Brnovich,

I am writing in regards to Commissioner Robert Burns' letter of February 9, 2016 requesting a formal legal opinion from you. I believe some background on utility ratemaking processes may benefit you as you consider Commissioner Burns' request.

Utility rates are set in proceedings known as rate cases. A rate case reviews the books and records of the utility for a specified 12 month period (the "test year.") The expenses and level of capital investment from the test year are used to determine how much revenue the utility needs to operate. So, unless a specific adjuster mechanism has been established in a prior rate case, expenses that occur outside of the test year are never included in rates. 2014 was not and will not be a test year in any APS rate case. Therefore, there is no avenue for 2014 expenses (other than those specified to be included in certain adjuster mechanisms) to ever influence APS' rates.

Within a rate case, expenses associated with political contributions, lobbying and charitable contributions are deemed to be unrecoverable in rates. The inability to recover these expenses in rates is a long standing component of utility ratemaking in Arizona. No Arizona utility in recent memory has argued that such expenses should be recoverable. Arizona is not unique in this respect. The inability to recover these types of expenses in rates is standard utility ratemaking as practiced in most (if not all) other states.

During a rate case, the Commission Staff performs an audit to ensure that only expenses that are deemed to be recoverable influence rates. For small utilities the Staff performs the audit themselves. For large utilities, such as APS, Staff typically employs professional and highly experienced consultants to perform the audit. These audits confirm that no expenses associated with political contributions, lobbying, and charitable contributions (or any other expenses deemed unrecoverable) influence the utility's rates.

In addition to the audit conducted by the ACC during a rate case, SEC requirements necessitate that an independent accounting firm review the books of most of our large utilities (including APS.) That review, among other things, ensures that all expenses are properly classified. This provides an extra layer of assurance on top of the rate case audit that expenses deemed unrecoverable are not included in rates.

In conclusion, the existing and long established rate case process at the ACC already ensures that expenses associated with political contributions, lobbying, and charitable contributions are not recovered through and do not influence utility rates. I am not aware of any evidence (or even allegations) that the existing rate case process is deficient in that regard. Any review of the appropriateness of extraordinary measures that are portrayed as related to the ACC's authority to set just and reasonable rates should take the above facts into consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Doug Little", with a horizontal line extending to the right.

Chairman Doug Little
Arizona Corporations Commission
1200 W. Washington St.
Phoenix, AZ. 85007

EXHIBIT E

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2016

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number	Registrant's State of Incorporation; Address; and Telephone Number	IRS Employer Identification No.
1-8962	PINNACLE WEST CAPITAL CORPORATION (An Arizona corporation) 400 North Fifth Street, P.O. Box 53999 Phoenix, Arizona 85072-3999 (602) 250-1000	86-0512431
1-4473	ARIZONA PUBLIC SERVICE COMPANY (An Arizona corporation) 400 North Fifth Street, P.O. Box 53999 Phoenix, Arizona 85072-3999 (602) 250-1000	86-0011170

Securities registered pursuant to Section 12(b) of the Act:

	Title Of Each Class	Name Of Each Exchange On Which Registered
PINNACLE WEST CAPITAL CORPORATION	Common Stock, No Par Value	New York Stock Exchange
ARIZONA PUBLIC SERVICE COMPANY	None	None

Securities registered pursuant to Section 12(g) of the Act:

ARIZONA PUBLIC SERVICE COMPANY Common Stock, Par Value \$2.50 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act

PINNACLE WEST CAPITAL CORPORATION	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
ARIZONA PUBLIC SERVICE COMPANY	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

PINNACLE WEST CAPITAL CORPORATION	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
ARIZONA PUBLIC SERVICE COMPANY	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

PINNACLE WEST CAPITAL CORPORATION	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
ARIZONA PUBLIC SERVICE COMPANY	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

PINNACLE WEST CAPITAL CORPORATION	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
ARIZONA PUBLIC SERVICE COMPANY	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or in any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one).

PINNACLE WEST CAPITAL CORPORATION	Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
	Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>
(Do not check if a smaller reporting company)		
ARIZONA PUBLIC SERVICE COMPANY	Large accelerated filer <input type="checkbox"/>	Accelerated filer <input type="checkbox"/>
	Non-accelerated filer <input checked="" type="checkbox"/>	Smaller reporting company <input type="checkbox"/>
(Do not check if a smaller reporting company)		

Indicate by check mark whether each registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

State the aggregate market value of the voting and non-voting common equity held by non-affiliates, computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of each registrant's most recently completed second fiscal quarter.

PINNACLE WEST CAPITAL CORPORATION
ARIZONA PUBLIC SERVICE COMPANY

\$8,961,361,256 as of June 30, 2016
\$0 as of June 30, 2016

The number of shares outstanding of each registrant's common stock as of February 17, 2017

PINNACLE WEST CAPITAL CORPORATION
ARIZONA PUBLIC SERVICE COMPANY

111,340,169 shares
Common Stock, \$2.50 par value, 71,264,947 shares. Pinnacle West Capital Corporation is the sole holder of Arizona Public Service Company's Common Stock.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Pinnacle West Capital Corporation's definitive Proxy Statement relating to its Annual Meeting of Shareholders to be held on May 17, 2017 are incorporated by reference into Part III hereof.

Arizona Public Service Company meets the conditions set forth in General Instruction I(1)(a) and (b) of Form 10-K and is therefore filing this form with the reduced disclosure format allowed under that General Instruction.

TABLE OF CONTENTS

	<u>Page</u>
<u>GLOSSARY OF NAMES AND TECHNICAL TERMS</u>	ii
<u>FORWARD-LOOKING STATEMENTS</u>	2
<u>PART I</u>	3
<u>Item 1. Business</u>	3
<u>Item 1A. Risk Factors</u>	29
<u>Item 1B. Unresolved Staff Comments</u>	41
<u>Item 2. Properties</u>	42
<u>Item 3. Legal Proceedings</u>	45
<u>Item 4. Mine Safety Disclosures</u>	45
<u>Executive Officers of Pinnacle West</u>	46
<u>PART II</u>	47
<u>Item 5. Market for Registrants' Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	47
<u>Item 6. Selected Financial Data</u>	48
<u>Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	50
<u>Item 7A. Quantitative and Qualitative Disclosures About Market Risk</u>	77
<u>Item 8. Financial Statements and Supplementary Data</u>	78
<u>Pinnacle West Financial Statements</u>	82
<u>APS Financial Statements</u>	91
<u>Combined Notes to Consolidated Financial Statements</u>	97
<u>Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	175
<u>Item 9A. Controls and Procedures</u>	175
<u>Item 9B. Other Information</u>	176
<u>PART III</u>	176
<u>Item 10. Directors, Executive Officers and Corporate Governance of Pinnacle West</u>	176
<u>Item 11. Executive Compensation</u>	176
<u>Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	176
<u>Item 13. Certain Relationships and Related Transactions, and Director Independence</u>	176
<u>Item 14. Principal Accountant Fees and Services</u>	177
<u>PART IV</u>	178
<u>Item 15. Exhibits and Financial Statement Schedules</u>	178
<u>SIGNATURES</u>	198

This combined Form 10-K is separately filed by Pinnacle West and APS. Each registrant is filing on its own behalf all of the information contained in this Form 10-K that relates to such registrant and, where required, its subsidiaries. Except as stated in the preceding sentence, neither registrant is filing any information that does not relate to such registrant, and therefore makes no representation as to any such information. The information required with respect to each company is set forth within the applicable items. Item 8 of this report includes Consolidated Financial Statements of Pinnacle West and Consolidated Financial Statements of APS. Item 8 also includes Combined Notes to Consolidated Financial Statements.

GLOSSARY OF NAMES AND TECHNICAL TERMS

4CA	4C Acquisition, LLC, a wholly-owned subsidiary of Pinnacle West
ac	Alternating Current
ACC	Arizona Corporation Commission
ADEQ	Arizona Department of Environmental Quality
AFUDC	Allowance for Funds Used During Construction
ANPP	Arizona Nuclear Power Project, also known as Palo Verde
APS	Arizona Public Service Company, a subsidiary of the Company
ARO	Asset retirement obligations
ASU	Accounting Standards Update
BART	Best available retrofit technology
Base Fuel Rate	The portion of APS's retail base rates attributable to fuel and purchased power costs
BCE	Bright Canyon Energy Corporation, a subsidiary of the Company
BHP Billiton	BHP Billiton New Mexico Coal, Inc.
BNCC	BHP Navajo Coal Company
CAISO	California Independent System Operator
CCR	Coal combustion residuals
Cholla	Cholla Power Plant
dc	Direct Current
distributed energy systems	Small-scale renewable energy technologies that are located on customers' properties, such as rooftop solar systems
DOE	United States Department of Energy
DOI	United States Department of the Interior
DOJ	United States Department of Justice
DSM	Demand side management
DSMAC	Demand side management adjustment charge
EES	Energy Efficiency Standard
El Dorado	El Dorado Investment Company, a subsidiary of the Company
El Paso	El Paso Electric Company
EPA	United States Environmental Protection Agency
FERC	United States Federal Energy Regulatory Commission
Four Corners	Four Corners Power Plant
GWh	Gigawatt-hour, one billion watts per hour
kV	Kilovolt, one thousand volts
kWh	Kilowatt-hour, one thousand watts per hour
LFCR	Lost Fixed Cost Recovery Mechanism
MMBtu	One million British Thermal Units
MW	Megawatt, one million watts
MWh	Megawatt-hour, one million watts per hour
Native Load	Retail and wholesale sales supplied under traditional cost-based rate regulation
Navajo Plant	Navajo Generating Station
NERC	North American Electric Reliability Corporation
NRC	United States Nuclear Regulatory Commission
NTEC	Navajo Transitional Energy Company, LLC
OCI	Other comprehensive income
OSM	Office of Surface Mining Reclamation and Enforcement
Palo Verde	Palo Verde Nuclear Generating Station or PVNGS
Pinnacle West	Pinnacle West Capital Corporation (any use of the words "Company," "we," and "our" refer to Pinnacle West)
PSA	Power supply adjustor approved by the ACC to provide for recovery or refund of variations in actual fuel and purchased power costs compared with the Base Fuel Rate
RES	Arizona Renewable Energy Standard and Tariff
Salt River Project or SRP	Salt River Project Agricultural Improvement and Power District
SCE	Southern California Edison Company
TCA	Transmission cost adjustor
VIE	Variable interest entity

FORWARD-LOOKING STATEMENTS

This document contains forward-looking statements based on current expectations. These forward-looking statements are often identified by words such as “estimate,” “predict,” “may,” “believe,” “plan,” “expect,” “require,” “intend,” “assume,” “project” and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. In addition to the Risk Factors described in Item 1A and in Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” these factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental, economic and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;
- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and ACC orders.

These and other factors are discussed in the Risk Factors described in Item 1A of this report, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

PART I

ITEM 1. BUSINESS

Pinnacle West

Pinnacle West is a holding company that conducts business through its subsidiaries. We derive essentially all of our revenues and earnings from our wholly-owned subsidiary, APS. APS is a vertically-integrated electric utility that provides either retail or wholesale electric service to most of the State of Arizona, with the major exceptions of about one-half of the Phoenix metropolitan area, the Tucson metropolitan area and Mohave County in northwestern Arizona.

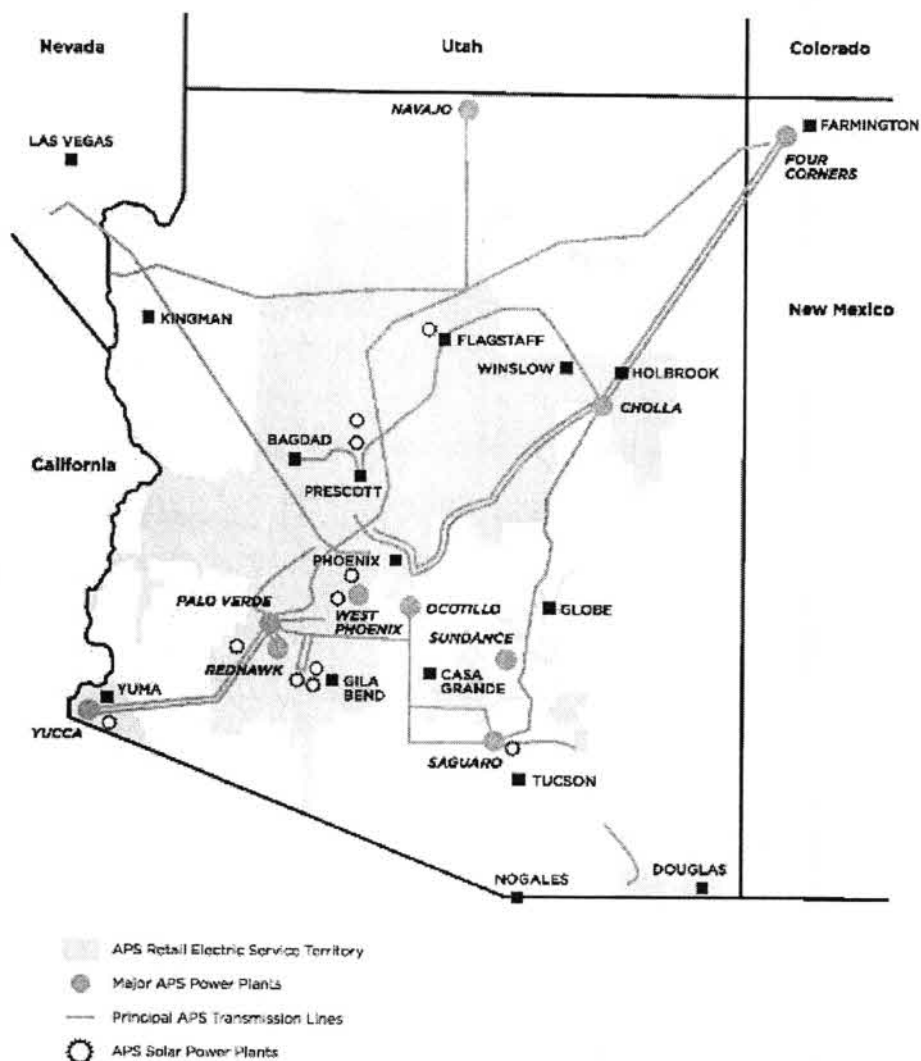
Pinnacle West's other subsidiaries are El Dorado, BCE and 4CA. Additional information related to these subsidiaries is provided later in this report.

Our reportable business segment is our regulated electricity segment, which consists of traditional regulated retail and wholesale electricity businesses (primarily electric service to Native Load customers) and related activities, and includes electricity generation, transmission and distribution.

BUSINESS OF ARIZONA PUBLIC SERVICE COMPANY

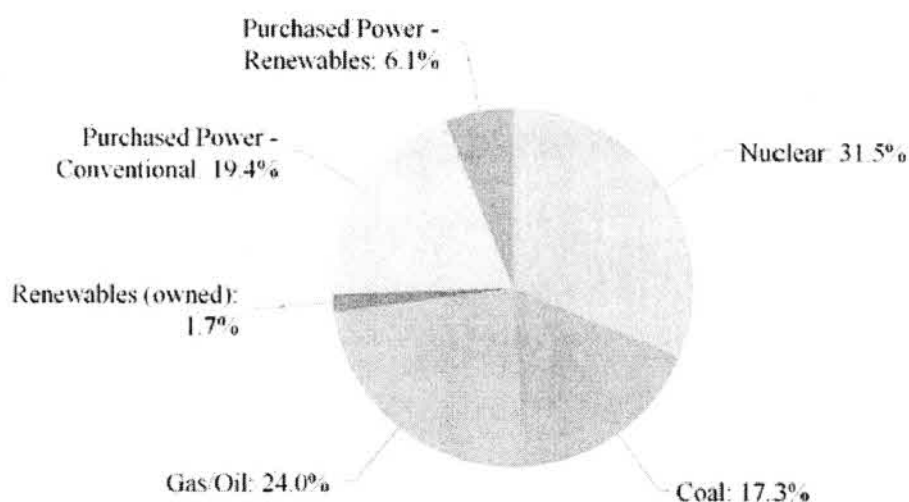
APS currently provides electric service to approximately 1.2 million customers. We own or lease 6,236 MW of regulated generation capacity and we hold a mix of both long-term and short-term purchased power agreements for additional capacity, including a variety of agreements for the purchase of renewable energy. During 2016, no single purchaser or user of energy accounted for more than 1.1% of our electric revenues.

The following map shows APS's retail service territory, including the locations of its generating facilities and principal transmission lines.



Energy Sources and Resource Planning

To serve its customers, APS obtains power through its various generation stations and through purchased power agreements. Resource planning is an important function necessary to meet Arizona's future energy needs. APS's sources of energy by type used to supply energy to Native Load customers during 2016 were as follows:



Generation Facilities

APS has ownership interests in or leases the coal, nuclear, gas, oil and solar generating facilities described below. For additional information regarding these facilities, see Item 2.

Coal-Fueled Generating Facilities

Four Corners — Four Corners is located in the northwestern corner of New Mexico, and was originally a 5-unit coal-fired power plant. APS owns 100% of Units 1, 2 and 3, which were retired as of December 30, 2013. APS operates the plant and owns 63% of Four Corners Units 4 and 5 following the acquisition of SCE's interest in Units 4 and 5 described below. APS has a total entitlement from Four Corners of 970 MW. Additionally, 4CA, a wholly-owned subsidiary of Pinnacle West, owns 7% of Units 4 and 5 following its acquisition of El Paso's interest in these units described below.

On December 30, 2013, APS purchased SCE's 48% interest in each of Units 4 and 5 of Four Corners. The final purchase price for the interest was approximately \$182 million. In connection with APS's prior retail

rate case with the ACC, the ACC reserved the right to review the prudence of the Four Corners transaction for cost recovery purposes upon the closing of the transaction. On December 23, 2014, the ACC approved rate adjustments related to APS's acquisition of SCE's interest in Four Corners resulting in a revenue increase of \$57.1 million on an annual basis. On February 23, 2015, the ACC decision approving the rate adjustments was appealed. APS has intervened and is actively participating in the proceeding. The Arizona Court of Appeals suspended the appeal pending the Arizona Supreme Court's decision in the System Improvement Benefits ("SIB") matter discussed in Note 3. On August 8, 2016, the Arizona Supreme Court issued its opinion in the SIB matter, and the Arizona Court of Appeals has now ordered supplemental briefing on how that SIB decision should affect the challenge to the Four Corners rate adjustment. We cannot predict when or how this matter will be resolved.

Concurrently with the closing of the SCE transaction, BHP Billiton, the parent company of BNCC, the coal supplier and operator of the mine that serves Four Corners, transferred its ownership of BNCC to NTEC, a company formed by the Navajo Nation to own the mine and develop other energy projects. BHP Billiton was retained by NTEC under contract as the mine manager and operator through 2016. Also occurring concurrently with the closing, the Four Corners' co-owners executed a long-term agreement for the supply of coal to Four Corners from July 2016 through 2031 (the "2016 Coal Supply Agreement"). El Paso, a 7% owner in Units 4 and 5 of Four Corners, did not sign the 2016 Coal Supply Agreement. Under the 2016 Coal Supply Agreement, APS agreed to assume the 7% shortfall obligation. On February 17, 2015, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in each of Units 4 and 5 of Four Corners. 4CA purchased the El Paso interest on July 6, 2016. The purchase price was immaterial in amount, and 4CA assumed El Paso's reclamation and decommissioning obligations associated with the 7% interest.

NTEC has the option to purchase the 7% interest within a certain timeframe pursuant to an option granted to NTEC. On December 29, 2015, NTEC provided notice of its intent to exercise the option. The 2016 Coal Supply Agreement contains alternate pricing terms for the 7% shortfall obligations in the event NTEC does not purchase the interest.

APS, on behalf of the Four Corners participants, negotiated amendments to an existing facility lease with the Navajo Nation, which extends the Four Corners leasehold interest from 2016 to 2041. The Navajo Nation approved these amendments in March 2011. The effectiveness of the amendments also required the approval of the DOI, as did a related federal rights-of-way grant. A federal environmental review was undertaken as part of the DOI review process, and culminated in the issuance by DOI of a record of decision on July 17, 2015 justifying the agency action extending the life of the plant and the adjacent mine.

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the Endangered Species Act ("ESA") and the National Environmental Policy Act ("NEPA") in providing the federal approvals necessary to extend operations at Four Corners and the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016. Briefing on the merits of this litigation is expected to extend through May 2017. On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. Because the court has placed a stay on all litigation deadlines pending its decision regarding NTEC's motion to dismiss, the schedule for briefing and the anticipated timeline for completion of this litigation will likely be extended. We cannot predict the outcome of this matter or its potential effect on Four Corners.

Cholla — Cholla was originally a 4-unit coal-fired power plant, which is located in northeastern Arizona. APS operates the plant and owns 100% of Cholla Units 1, 2 and 3. PacifiCorp owns Cholla Unit 4,

and APS operates that unit for PacifiCorp. On September 11, 2014, APS announced that it would close its 260 MW Unit 2 at Cholla and cease burning coal at Units 1 and 3 by the mid-2020s if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. (See Note 3 for details related to the resulting regulatory asset and Note 10 for details of the proposal.) APS believes that the environmental benefits of this proposal are greater in the long-term than the benefits that would have resulted from adding the emissions control equipment. APS closed Unit 2 on October 1, 2015. Following the closure of Unit 2, APS has a total entitlement from Cholla of 387 MW.

On January 13, 2017, EPA approved a final rule incorporating APS's compromise approach. Once the final rule is published in the Federal Register, parties have 60 days to file a petition for review in the Ninth Circuit Court of Appeals. APS cannot predict at this time whether such petitions will be filed or if they will be successful. In addition, under the terms of an executive memorandum issued on January 20, 2017, this final rule will not be published in the Federal Register until after it has been reviewed by an appointee of the President. We cannot predict when such review will occur and what may result from the additional review.

APS purchases all of Cholla's coal requirements from a coal supplier, an affiliate of Peabody Energy Corporation, that mines all of the coal under long-term leases of coal reserves with the federal and state governments and private landholders. On April 13, 2016, Peabody Energy Corporation and certain affiliated entities filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri. Under the Coal Supply Agreement, dated December 21, 2005, Peabody supplied coal to APS and PacifiCorp (collectively, the "Buyers") for use at Cholla. APS believes that the Coal Supply Agreement terminated automatically on April 13, 2016 as a result of Peabody's bankruptcy filing. The Buyers filed a motion requesting that the Bankruptcy Court enter an order determining that the Buyers are authorized to enforce the termination provisions in the Coal Supply Agreement.

On May 13, 2016, Peabody filed a complaint against the Buyers in the bankruptcy court in which Peabody alleged that the Buyers breached the Coal Supply Agreement. On January 27, 2017, the bankruptcy court approved a settlement between the parties, and on February 6, 2017 the parties executed an amendment to the Coal Supply Agreement that allows for continuation of the agreement with modified terms and conditions acceptable to the parties.

APS has a long-term coal transportation by rail contract that expires in 2017.

Navajo Generating Station — The Navajo Plant is a 3-unit coal-fired power plant located in northern Arizona. Salt River Project operates the plant and APS owns a 14% interest in Navajo Units 1, 2 and 3. APS has a total entitlement from the Navajo Plant of 315 MW. The Navajo Plant's coal requirements are purchased from a supplier with long-term leases from the Navajo Nation and the Hopi Tribe. The Navajo Plant is under contract with its coal supplier through 2019, with extension rights through 2026. The Navajo Plant site is leased from the Navajo Nation and is also subject to an easement from the federal government. The current lease expires in 2019.

On February 13, 2017, the co-owners of the Navajo Plant voted not to pursue continued operation of the plant beyond December 2019, the expiration of the current lease term, and to pursue a new lease or lease extension with the Navajo Nation that would allow decommissioning activities to begin after December 2019 instead of later this year. Various stakeholders including regulators, tribal representatives and others interested in the continued operation of the plant intend to meet to determine if an alternate solution can be reached that would permit continued operation of the plant beyond 2019. We cannot predict whether any alternate solutions will be found that would be acceptable to all of the stakeholders and feasible to implement. APS is currently

recovering depreciation and a return on the net book value of its interest in the Navajo Plant. APS will seek continued recovery in rates for the book value of its remaining investment in the plant (\$108 million as of December 31, 2016) plus a return on the net book value as well as other costs related to retirement and closure, which are still being assessed and which may be material. We cannot predict whether APS would obtain such recovery.

On February 14, 2017, the ACC opened a docket titled "ACC Investigation Concerning the Future of the Navajo Generating Station" with the stated goal of engaging stakeholders and negotiating a sustainable pathway for the Navajo Plant to continue operating in some form after December 2019. APS cannot predict the outcome of this proceeding.

These coal-fueled plants face uncertainties, including those related to existing and potential legislation and regulation, that could significantly impact their economics and operations. See "Environmental Matters" below and "Management's Discussion and Analysis of Financial Condition and Results of Operations — Overview and Capital Expenditures" in Item 7 for developments impacting these coal-fueled facilities. See Note 10 for information regarding APS's coal mine reclamation obligations.

Nuclear

Palo Verde Nuclear Generating Station — Palo Verde is a 3-unit nuclear power plant located approximately 50 miles west of Phoenix, Arizona. APS operates the plant and owns 29.1% of Palo Verde Units 1 and 3 and approximately 17% of Unit 2. In addition, APS leases approximately 12.1% of Unit 2, resulting in a 29.1% combined ownership and leasehold interest in that unit. APS has a total entitlement from Palo Verde of 1,146 MW.

Palo Verde Leases — In 1986, APS entered into agreements with three separate lessor trust entities in order to sell and lease back approximately 42% of its share of Palo Verde Unit 2 and certain common facilities. The leaseback was originally scheduled to expire at the end of 2015 and contained options to renew the leases or to purchase the leased property for fair market value at the end of the lease terms. On July 7, 2014, APS exercised the fixed rate lease renewal options. The exercise of the renewal options resulted in APS retaining the assets through 2023 under one lease and 2033 under the other two leases. At the end of the lease renewal periods, APS will have the option to purchase the leased assets at their fair market value, extend the leases for up to two years, or return the assets to the lessors. See Note 18 for additional information regarding the Palo Verde Unit 2 sale leaseback transactions.

Palo Verde Operating Licenses — Operation of each of the three Palo Verde Units requires an operating license from the NRC. The NRC issued full power operating licenses for Unit 1 in June 1985, Unit 2 in April 1986 and Unit 3 in November 1987, and issued renewed operating licenses for each of the three units in April 2011, which extended the licenses for Units 1, 2 and 3 to June 2045, April 2046 and November 2047, respectively.

Palo Verde Fuel Cycle — The Palo Verde participants are continually identifying their future nuclear fuel resource needs and negotiating arrangements to fill those needs. The fuel cycle for Palo Verde is comprised of the following stages:

- mining and milling of uranium ore to produce uranium concentrates;
- conversion of uranium concentrates to uranium hexafluoride;
- enrichment of uranium hexafluoride;
- fabrication of fuel assemblies;
- utilization of fuel assemblies in reactors; and
- storage and disposal of spent nuclear fuel.

The Palo Verde participants have contracted for 100% of Palo Verde's requirements for uranium concentrates and conversion services through 2018 and 45% of its requirements in 2019-2025. The participants have also contracted for 100% of Palo Verde's enrichment services through 2020 and 20% of its enrichment services for 2021-2026; and all of Palo Verde's fuel assembly fabrication services through 2024.

Spent Nuclear Fuel and Waste Disposal — The Nuclear Waste Policy Act of 1982 ("NWPA") required the DOE to accept, transport, and dispose of spent nuclear fuel and high level waste generated by the nation's nuclear power plants by 1998. The DOE's obligations are reflected in a contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (the "Standard Contract") with each nuclear power plant. The DOE failed to begin accepting spent nuclear fuel by 1998. APS is directly and indirectly involved in several legal proceedings related to DOE's failure to meet its statutory and contractual obligations regarding acceptance of spent nuclear fuel and high level waste.

APS Lawsuit for Breach of Standard Contract — In December 2003, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a lawsuit against DOE in the United States Court of Federal Claims ("Court of Federal Claims") for damages incurred due to DOE's breach of the Standard Contract. The Court of Federal Claims ruled in favor of APS and the Palo Verde participants in October 2010 and awarded \$30.2 million in damages to APS and the Palo Verde participants for costs incurred through December 2006.

On December 19, 2012, APS, acting on behalf of itself and the participant owners of Palo Verde, filed a second breach of contract lawsuit against the DOE in the Court of Federal Claims. This lawsuit sought to recover damages incurred due to DOE's breach of the Standard Contract for failing to accept Palo Verde's spent nuclear fuel and high level waste from January 1, 2007 through June 30, 2011, as it was required to do pursuant to the terms of the Standard Contract and the Nuclear Waste Policy Act. On August 18, 2014, APS and DOE entered into a settlement agreement, stipulating to a dismissal of the lawsuit and payment of \$57.4 million by DOE to the Palo Verde owners for certain specified costs incurred by Palo Verde during the period January 1, 2007 through June 30, 2011. APS's share of this amount is \$16.7 million. Amounts recovered in the lawsuit and settlement were recorded as adjustments to a regulatory liability and had no impact on the amount of reported net income. In addition, the settlement agreement provides APS with a method for submitting claims and getting recovery for costs incurred through December 31, 2016, which has been extended to December 31, 2019.

APS has submitted two claims pursuant to the terms of the August 18, 2014 settlement agreement, for two separate time periods during July 1, 2011 through June 30, 2015. The DOE has approved and paid \$53.9 million for these claims (APS's share is \$15.7 million). The amounts recovered were primarily recorded as adjustments to a regulatory liability and had no impact on reported net income. APS's next claim pursuant to the terms of the August 18, 2014 settlement agreement was submitted to the DOE on October 31, 2016, and approved on February 1, 2017, in the amount \$11.3 million (APS's share is \$3.3 million). Payment for the claim is expected in the second quarter of 2017.

The One-Mill Fee — In 2011, the National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute challenged DOE's 2010 determination of the adequacy of the one tenth of a cent per kWh fee (the "one-mill fee") paid by the nation's commercial nuclear power plant owners pursuant to their individual obligations under the Standard Contract. This fee is recovered by APS in its retail rates. In June 2012, the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") held that DOE failed to conduct a sufficient fee analysis in making the 2010 determination. The D.C. Circuit remanded the 2010 determination to the Secretary of the DOE ("Secretary") with instructions to conduct a new fee adequacy determination within six months. In February 2013, upon completion of DOE's revised one-mill fee adequacy determination, the D.C. Circuit reopened the proceedings. On November 19, 2013, the D.C. Circuit found that the DOE did not conduct a legally adequate fee assessment and ordered the Secretary to notify Congress of his

intent to suspend collecting annual fees for nuclear waste disposal from nuclear power plant operators, as he is required to do pursuant to the NWPAA and the D.C. Circuit's order. On January 3, 2014, the Secretary notified Congress of his intention to suspend collection of the one-mill fee, subject to Congress' disapproval. On May 16, 2014, the DOE notified all commercial nuclear power plant operators who are party to a Standard Contract that it reduced the one-mill fee to zero, thus effectively terminating the one-mill fee.

DOE's Construction Authorization Application for Yucca Mountain — The DOE had planned to meet its NWPAA and Standard Contract disposal obligations by designing, licensing, constructing, and operating a permanent geologic repository at Yucca Mountain, Nevada. In June 2008, the DOE submitted its Yucca Mountain construction authorization application to the NRC, but in March 2010, the DOE filed a motion to dismiss with prejudice the Yucca Mountain construction authorization application. Several interested parties have also intervened in the NRC proceeding. Additionally, a number of interested parties filed a variety of lawsuits in different jurisdictions around the country challenging the DOE's authority to withdraw the Yucca Mountain construction authorization application and NRC's cessation of its review of the Yucca Mountain construction authorization application. The cases have been consolidated into one matter at the D.C. Circuit. In August 2013, the D.C. Circuit ordered the NRC to resume its review of the application with available appropriated funds.

On October 16, 2014, the NRC issued Volume 3 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume addresses repository safety after permanent closure, and its issuance is a key milestone in the Yucca Mountain licensing process. Volume 3 contains the staff's finding that the DOE's repository design meets the requirements that apply after the repository is permanently closed, including but not limited to the post-closure performance objectives in NRC's regulations.

On December 18, 2014, the NRC issued Volume 4 of the safety evaluation report developed as part of the Yucca Mountain construction authorization application. This volume covers administrative and programmatic requirements for the repository. It documents the staff's evaluation of whether the DOE's research and development and performance confirmation programs, as well as other administrative controls and systems, meet applicable NRC requirements. Volume 4 contains the staff's finding that most administrative and programmatic requirements in NRC regulations are met, except for certain requirements relating to ownership of land and water rights.

Publication of Volumes 3 and 4 does not signal whether or when the NRC might authorize construction of the repository.

Waste Confidence and Continued Storage — On June 8, 2012, the D.C. Circuit issued its decision on a challenge by several states and environmental groups of the NRC's rulemaking regarding temporary storage and permanent disposal of high level nuclear waste and spent nuclear fuel. The petitioners had challenged the NRC's 2010 update to the agency's Waste Confidence Decision and temporary storage rule ("Waste Confidence Decision").

The D.C. Circuit found that the agency's 2010 Waste Confidence Decision update constituted a major federal action, which, consistent with NEPA, requires either an environmental impact statement or a finding of no significant impact from the agency's actions. The D.C. Circuit found that the NRC's evaluation of the environmental risks from spent nuclear fuel was deficient, and therefore remanded the 2010 Waste Confidence Decision update for further action consistent with NEPA.

On September 6, 2012, the NRC Commissioners issued a directive to the NRC staff to proceed directly with development of a generic environmental impact statement to support an updated Waste Confidence

Decision. The NRC Commissioners also directed the staff to establish a schedule to publish a final rule and environmental impact study within 24 months of September 6, 2012.

In September 2013, the NRC issued its draft Generic Environmental Impact Statement (“GEIS”) to support an updated Waste Confidence Decision. On August 26, 2014, the NRC approved a final rule on the environmental effects of continued storage of spent nuclear fuel. Renamed as the Continued Storage Rule, the NRC’s decision adopted the findings of the GEIS regarding the environmental impacts of storing spent fuel at any reactor site after the reactor’s licensed period of operations. As a result, those generic impacts do not need to be re-analyzed in the environmental reviews for individual licenses. Although Palo Verde had not been involved in any licensing actions affected by the D.C. Circuit’s June 8, 2012, decision, the NRC lifted its suspension on final licensing actions on all nuclear power plant licenses and renewals that went into effect when the D.C. Circuit issued its June 2012 decision. The final Continued Storage Rule was subject to continuing legal challenges before the NRC and the Court of Appeals. In June 2016, the D.C. Circuit issued its final decision, rejecting all remaining legal challenges to the Continued Storage Rule. On August 8, 2016, the D.C. Circuit denied a petition for rehearing.

Palo Verde has sufficient capacity at its on-site independent spent fuel storage installation (“ISFSI”) to store all of the nuclear fuel that will be irradiated during the initial operating license period, which ends in December 2027. Additionally, Palo Verde has sufficient capacity at its on-site ISFSI to store a portion of the fuel that will be irradiated during the period of extended operation, which ends in November 2047. If uncertainties regarding the United States government’s obligation to accept and store spent fuel are not favorably resolved, APS will evaluate alternative storage solutions that may obviate the need to expand the ISFSI to accommodate all of the fuel that will be irradiated during the period of extended operation.

Nuclear Decommissioning Costs — APS currently relies on an external sinking fund mechanism to meet the NRC financial assurance requirements for decommissioning its interests in Palo Verde Units 1, 2 and 3. The decommissioning costs of Palo Verde Units 1, 2 and 3 are currently included in APS’s ACC jurisdictional rates. Decommissioning costs are recoverable through a non-bypassable system benefits charge (paid by all retail customers taking service from the APS system). Based on current nuclear decommissioning trust asset balances, site specific decommissioning cost studies, anticipated future contributions to the decommissioning trusts, and return projections on the asset portfolios over the expected remaining operating life of the facility, we are on track to meet the current site specific decommissioning costs for Palo Verde at the time the units are expected to be decommissioned. See Note 19 for additional information about APS’s nuclear decommissioning trusts.

Palo Verde Liability and Insurance Matters — See “Palo Verde Nuclear Generating Station — Nuclear Insurance” in Note 10 for a discussion of the insurance maintained by the Palo Verde participants, including APS, for Palo Verde.

Natural Gas and Oil Fueled Generating Facilities

APS has six natural gas power plants located throughout Arizona, consisting of Redhawk, located near Palo Verde; Ocotillo, located in Tempe (discussed below); Sundance, located in Coolidge; West Phoenix, located in southwest Phoenix; Saguaro, located north of Tucson; and Yucca, located near Yuma. Several of the units at Yucca run on either gas or oil. APS has one oil-only power plant, Douglas, located in the town of Douglas, Arizona. APS owns and operates each of these plants with the exception of one oil-only combustion turbine unit and one oil and gas steam unit at Yucca that are operated by APS and owned by the Imperial Irrigation District. APS has a total entitlement from these plants of 3,179 MW. Gas for these plants is financially hedged up to three years in advance of purchasing and the gas is generally purchased one month prior to delivery. APS has long-term gas transportation agreements with three different companies, some of

which are effective through 2024. Fuel oil is acquired under short-term purchases delivered primarily to West Phoenix, where it is distributed to APS's other oil power plants by truck.

Ocotillo is a 330 MW 4-unit gas plant located in the metropolitan Phoenix area. In early 2014, APS announced a project to modernize the plant, which involves retiring two older 110 MW steam units, adding five 102 MW combustion turbines and maintaining two existing 55 MW combustion turbines. In total, this increases the capacity of the site by 290 MW, to 620 MW, with completion targeted by summer 2019. (See Note 3 for proposed rate recovery in our current retail rate case.) On September 9, 2016, Maricopa County issued a final permit decision that authorizes construction of the Ocotillo modernization project and construction will begin in early 2017.

Solar Facilities

APS developed utility scale solar resources through the 170 MW ACC-approved AZ Sun Program. APS invested approximately \$675 million in its AZ Sun Program. These facilities are owned by APS and are located in multiple locations throughout Arizona. In 2016, APS developed the 40MW Red Rock Solar Plant, which it owns and operates. Two of our large customers will purchase renewable energy credits from APS that is equivalent to the amount of renewable energy that Red Rock is projected to generate.

Additionally, APS owns and operates more than forty small solar systems around the state. Together they have the capacity to produce approximately 4 MW of renewable energy. This fleet of solar systems includes a 3 MW facility located at the Prescott Airport and 1 MW of small solar in various locations across Arizona. APS has also developed solar photovoltaic distributed energy systems installed as part of the Community Power Project in Flagstaff, Arizona. The Community Power Project, approved by the ACC on April 1, 2010, is a pilot program through which APS owns, operates and receives energy from approximately 1 MW of solar photovoltaic distributed energy systems located within a certain test area in Flagstaff, Arizona. Additionally, APS owns 12 MW of solar photovoltaic systems installed across Arizona through the ACC-approved Schools and Government Program.

In December 2014, the ACC voted that it had no objection to APS implementing an APS-owned rooftop solar research and development program aimed at learning how to efficiently enable the integration of rooftop solar and battery storage with the grid. The first stage of the program, called the "Solar Partner Program," placed 8 MW of residential rooftop solar on strategically selected distribution feeders in an effort to maximize potential system benefits, as well as made systems available to limited-income customers who could not easily install solar through transactions with third parties. The second stage of the program, which included an additional 2 MW of rooftop solar and energy storage, placed two energy storage systems sized at 2 MW on two different high solar penetration feeders to test various grid-related operation improvements and system interoperability, and was in operation by the end of 2016. The ACC expressly reserved that any determination of prudence of the residential rooftop solar program for rate making purposes would not be made until the project was fully in service, and APS has requested cost recovery for the project in its currently pending rate case. On September 30, 2016, APS presented its preliminary findings from the residential rooftop solar program in a filing with the ACC.

Purchased Power Contracts

In addition to its own available generating capacity, APS purchases electricity under various arrangements, including long-term contracts and purchases through short-term markets to supplement its owned or leased generation and hedge its energy requirements. A portion of APS's purchased power expense is netted against wholesale sales on the Consolidated Statements of Income. (See Note 16.) APS continually assesses its need for additional capacity resources to assure system reliability.

Purchased Power Capacity — APS's purchased power capacity under long-term contracts as of December 31, 2016 is summarized in the table below. All capacity values are based on net capacity unless otherwise noted.

Type	Dates Available	Capacity (MW)
Purchase Agreement (a)	Year-round through June 14, 2020	60
Exchange Agreement (b)	May 15 to September 15 annually through February 2021	480
Tolling Agreement	Year-round through May 2017	514
Tolling Agreement	Summer seasons through October 2019	560
Demand Response Agreement (c)	Summer seasons through 2024	25
Tolling Agreement (d)	Summer seasons from Summer 2020 through Summer 2025	565
Renewable Energy (e)	Various	629

- (a) Up to 60 MW of capacity is available; however, the amount of electricity available to APS under this agreement is based in large part on customer demand and is adjusted annually.
- (b) This is a seasonal capacity exchange agreement under which APS receives electricity during the summer peak season (from May 15 to September 15) and APS returns a like amount of electricity during the winter season (from October 15 to February 15).
- (c) The capacity under this agreement may be increased in 5 MW increments in each of 2015 and 2016 and 10 MW increments in years 2017 through 2024, up to a maximum of 50 MW.
- (d) This agreement was signed in response to APS's 2016 all source request for proposal seeking capacity resources.
- (e) Renewable energy purchased power agreements are described in detail below under "Current and Future Resources — Renewable Energy Standard — Renewable Energy Portfolio."

Current and Future Resources

Current Demand and Reserve Margin

Electric power demand is generally seasonal. In Arizona, demand for power peaks during the hot summer months. APS's 2016 peak one-hour demand on its electric system was recorded on June 19, 2016 at 7,051 MW, compared to the 2015 peak of 7,031 MW recorded on August 15, 2015. APS's reserve margin at the time of the 2016 peak demand, calculated using system load serving capacity, was 30%. For 2017, due to expiring purchase contracts, APS is procuring market resources to maintain its minimum 15% planning reserve criteria.

Future Resources and Resource Plan

APS filed its preliminary 2017 Integrated Resource Plan on March 1, 2016 and an updated preliminary 2017 Integrated Resource Plan on September 30, 2016. APS also held stakeholder meetings in February and November 2016 in addition to an ACC-led Integrated Resource Plan workshop in July 2016. The preliminary Integrated Resource Plan and associated stakeholder meetings are part of a modified planning process that allows time to incorporate implications of the Clean Power Plan as well as input from stakeholder meetings. The final Integrated Resource Plan will be submitted by or on April 3, 2017 and the ACC is expected to complete its review by February 1, 2018.

On September 11, 2014, APS announced that it would close Cholla Unit 2 and cease burning coal at the other APS-owned units (Units 1 and 3) at the plant by the mid-2020s, if EPA approves a compromise proposal offered by APS to meet required environmental and emissions standards and rules. On April 14, 2015, the ACC approved APS's plan to retire Unit 2, without expressing any view on the future recoverability of APS's remaining investment in the Unit. APS closed Unit 2 on October 1, 2015. Previously, APS estimated Cholla

Unit 2's end of life to be 2033. APS is currently recovering a return on and of the net book value of the unit in base rates and is seeking recovery of the unit's decommissioning and other retirement-related costs over the remaining life of the plant in its current retail rate case. APS believes it will be allowed recovery of the remaining net book value of Unit 2 (\$116 million as of December 31, 2016), in addition to a return on its investment. In accordance with GAAP, in the third quarter of 2014, Unit 2's remaining net book value was reclassified from property, plant and equipment to a regulatory asset. If the ACC does not allow full recovery of the remaining net book value of Cholla Unit 2, all or a portion of the regulatory asset will be written off and APS's net income, cash flows, and financial position will be negatively impacted. (See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Cholla" above for details regarding the status of the EPA's rule related to Cholla.)

See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Navajo Generating Station" above for information regarding future plans for the Navajo Plant.

Energy Imbalance Market

In 2015, APS and the CAISO, the operator for the majority of California's transmission grid, signed an agreement for APS to begin participation in the Energy Imbalance Market ("EIM"). APS's participation in the EIM began on October 1, 2016. The EIM allows for rebalancing supply and demand in 15-minute blocks with dispatching every five minutes before the energy is needed, instead of the traditional one hour blocks. APS expects that its participation in EIM will lower its fuel costs, improve visibility and situational awareness for system operations in the Western Interconnection power grid, and improve integration of APS's renewable resources.

Renewable Energy Standard

In 2006, the ACC adopted the RES. Under the RES, electric utilities that are regulated by the ACC must supply an increasing percentage of their retail electric energy sales from eligible renewable resources, including solar, wind, biomass, biogas and geothermal technologies. The renewable energy requirement is 7% of retail electric sales in 2017 and increases annually until it reaches 15% in 2025. In APS's 2009 retail rate case settlement agreement (the "2009 Settlement Agreement"), APS committed to have 1,700 GWh of new renewable resources in service by year-end 2015 in addition to its RES renewable resource commitments. APS met its settlement commitment and RES target for 2016.

A component of the RES is focused on stimulating development of distributed energy systems. Accordingly, under the RES, an increasing percentage of that requirement must be supplied from distributed energy resources. This distributed energy requirement is 30% of the overall RES requirement of 7% in 2017. The following table summarizes the RES requirement standard (not including the additional commitment required by the 2009 Settlement Agreement) and its timing:

	2017	2020	2025
RES as a % of retail electric sales	7%	10%	15%
Percent of RES to be supplied from distributed energy resources	30%	30%	30%

On April 21, 2015, the RES rules were amended to require utilities to report on all eligible renewable resources in their service territory, irrespective of whether the utility owns renewable energy credits associated with such renewable energy. The rules allow the ACC to consider such information in determining whether APS has satisfied the requirements of the RES.

Renewable Energy Portfolio. To date, APS has a diverse portfolio of existing and planned renewable resources totaling 1,480 MW, including solar, wind, geothermal, biomass and biogas. Of this portfolio, 1,440 MW are currently in operation and 40 MW are under contract for development or are under construction. Renewable resources in operation include 239 MW of facilities owned by APS, 629 MW of long-term purchased power agreements, and an estimated 539 MW of customer-sited, third-party owned distributed energy resources.

APS's strategy to achieve its RES requirements includes executing purchased power contracts for new facilities, ongoing development of distributed energy resources and procurement of new facilities to be owned by APS. See "Energy Sources and Resource Planning - Generation Facilities - Solar Facilities" above for information regarding APS-owned solar facilities.

Table of Contents

The following table summarizes APS's renewable energy sources currently in operation and under development. Agreements for the development and completion of future resources are subject to various conditions, including successful siting, permitting and interconnection of the projects to the electric grid.

	Location	Actual/ Target Commercial Operation Date	Term (Years)	Net Capacity In Operation (MW AC)	Net Capacity Planned/Under Development (MW AC)
APS Owned					
<i>Solar:</i>					
AZ Sun Program:					
Paloma	Gila Bend, AZ	2011		17	
Cotton Center	Gila Bend, AZ	2011		17	
Hyder Phase 1	Hyder, AZ	2011		11	
Hyder Phase 2	Hyder, AZ	2012		5	
Chino Valley	Chino Valley, AZ	2012		19	
Hyder II	Hyder, AZ	2013		14	
Foothills	Yuma, AZ	2013		35	
Gila Bend	Gila Bend, AZ	2014		32	
Luke AFB	Glendale, AZ	2015		10	
Desert Star	Buckeye, AZ	2015		10	
Subtotal AZ Sun Program				170	—
Multiple Facilities	AZ	Various		4	
Red Rock	Red Rock, AZ	2016		40	
<i>Distributed Energy:</i>					
APS Owned (a)	AZ	Various		25	
Total APS Owned				239	—
Purchased Power Agreements					
<i>Solar:</i>					
Solana	Gila Bend, AZ	2013	30	250	
RE Ajo	Ajo, AZ	2011	25	5	
Sun E AZ 1	Prescott, AZ	2011	30	10	
Saddle Mountain	Tonopah, AZ	2012	30	15	
Badger	Tonopah, AZ	2013	30	15	
Gillespie	Maricopa County, AZ	2013	30	15	
<i>Wind:</i>					
Aragonne Mesa	Santa Rosa, NM	2006	20	90	
High Lonesome	Mountainair, NM	2009	30	100	
Perrin Ranch Wind	Williams, AZ	2012	25	99	
<i>Geothermal:</i>					
Salton Sea	Imperial County, CA	2006	23	10	
<i>Biomass:</i>					
Snowflake	Snowflake, AZ	2008	15	14	
<i>Biogas:</i>					
Glendale Landfill	Glendale, AZ	2010	20	3	
NW Regional Landfill	Surprise, AZ	2012	20	3	
Total Purchased Power Agreements				629	—
Distributed Energy					
<i>Solar (b)</i>					
Third-party Owned	AZ	Various		539	40
Agreement 1	Bagdad, AZ	2011	25	15	
Agreement 2	AZ	2011-2012	20-21	18	
Total Distributed Energy				572	40
Total Renewable Portfolio				1,440	40

- (a) Includes Flagstaff Community Power Project, APS School and Government Program and APS Solar Partner Program.
- (b) Includes rooftop solar facilities owned by third parties. Distributed generation is produced in DC and is converted to AC for reporting purposes.

Demand Side Management

In December 2009, Arizona regulators placed an increased focus on energy efficiency and other demand side management programs to encourage customers to conserve energy, while incentivizing utilities to aid in these efforts that ultimately reduce the demand for energy. The ACC initiated its Energy Efficiency rulemaking, with a proposed Energy Efficiency Standard ("EES") of 22% cumulative annual energy savings by 2020. This standard was adopted and became effective on January 1, 2011. This standard will likely impact Arizona's future energy resource needs. (See Note 3 for energy efficiency and other demand side management obligations).

Competitive Environment and Regulatory Oversight

Retail

The ACC regulates APS's retail electric rates and its issuance of securities. The ACC must also approve any significant transfer or encumbrance of APS's property used to provide retail electric service and approve or receive prior notification of certain transactions between Pinnacle West, APS and their respective affiliates.

APS is subject to varying degrees of competition from other investor-owned electric and gas utilities in Arizona (such as Southwest Gas Corporation), as well as cooperatives, municipalities, electrical districts and similar types of governmental or non-profit organizations. In addition, some customers, particularly industrial and large commercial customers, may own and operate generation facilities to meet some or all of their own energy requirements. This practice is becoming more popular with customers installing or having installed products such as rooftop solar panels to meet or supplement their energy needs.

On April 14, 2010, the ACC issued a decision holding that solar vendors that install and operate solar facilities for non-profit schools and governments pursuant to a specific type of contract that calculates payments based on the energy produced are not "public service corporations" under the Arizona Constitution, and are therefore not regulated by the ACC. APS cannot predict when, and the extent to which, additional electric service providers will enter or re-enter APS's service territory.

On May 9, 2013, the ACC voted to re-examine the facilitation of a deregulated retail electric market in Arizona. The ACC subsequently opened a docket for this matter and received comments from a number of interested parties on the considerations involved in establishing retail electric deregulation in the state. One of these considerations was whether various aspects of a deregulated market, including setting utility rates on a "market" basis, would be consistent with the requirements of the Arizona Constitution. On September 11, 2013, after receiving legal advice from the ACC staff, the ACC voted 4-1 to close the current docket and await full Arizona Constitutional authority before any further examination of this matter. The motion approved by the ACC also included opening one or more new dockets in the future to explore options to offer more rate choices to customers and innovative changes within the existing cost-of-service regulatory model that could include elements of competition. The ACC opened a docket on November 4, 2013 to explore technological advances and innovative changes within the electric utility industry. A series of workshops in this docket were held in 2014 and another in February of 2015. No further workshops are scheduled and no actions were taken as a result of these workshops.

Wholesale

FERC regulates rates for wholesale power sales and transmission services. (See Note 3 for information regarding APS's transmission rates.) During 2016, approximately 3.5% of APS's electric operating revenues resulted from such sales and services. APS's wholesale activity primarily consists of managing fuel and purchased power supplies to serve retail customer energy requirements. APS also sells, in the wholesale market, its generation output that is not needed for APS's Native Load and, in doing so, competes with other utilities, power marketers and independent power producers. Additionally, subject to specified parameters, APS hedges both electricity and fuels. The majority of these activities are undertaken to mitigate risk in APS's portfolio.

Subpoena from Arizona Corporation Commissioner Robert Burns

On August 25, 2016, Commissioner Burns, individually and not by action of the ACC as a whole, filed subpoenas in APS's current retail rate proceeding to APS and Pinnacle West for the production of records and information relating to a range of expenditures from 2011 through 2016. The subpoenas requested information concerning marketing and advertising expenditures, charitable donations, lobbying expenses, contributions to 501(c)(3) and (c)(4) nonprofits and political contributions. The return date for the production of information was set as September 15, 2016. The subpoenas also sought testimony from Company personnel having knowledge of the material, including the Chief Executive Officer.

On September 9, 2016, APS filed with the ACC a motion to quash the subpoenas or, alternatively to stay APS's obligations to comply with the subpoenas and decline to decide APS's motion pending court proceedings. Contemporaneously with the filing of this motion, APS and Pinnacle West filed a complaint for special action and declaratory judgment in the Superior Court of Arizona for Maricopa County, seeking a declaratory judgment that Commissioner Burns' subpoenas are contrary to law. On September 15, 2016, APS produced all non-confidential and responsive documents and offered to produce any remaining responsive documents that are confidential after an appropriate confidentiality agreement is signed.

On February 7, 2017, Commissioner Burns opened a new ACC docket and indicated that its purpose is to study and rectify problems with transparency and disclosure regarding financial contributions from regulated monopolies or other stakeholders who may appear before the ACC that may directly or indirectly benefit an ACC Commissioner, a candidate for ACC Commissioner, or key ACC staff. As part of this docket, Commissioner Burns set March 24, 2017 as a deadline for APS to produce all information previously requested through the subpoenas. Commissioner Burns has also scheduled a workshop in this matter for March 17, 2017. APS and Pinnacle West cannot predict the outcome of this matter.

Environmental Matters

Climate Change

Legislative Initiatives. There have been no recent attempts by Congress to pass legislation that would regulate greenhouse gas ("GHG") emissions, and it is doubtful whether the 115th Congress will consider a climate change bill. In the event climate change legislation ultimately passes, the actual economic and operational impact of such legislation on APS depends on a variety of factors, none of which can be fully known until a law is written, enacted and the specifics of the resulting program are established. These factors include the terms of the legislation with regard to allowed GHG emissions; the cost to reduce emissions; in the event a cap-and-trade program is established, whether any permitted emissions allowances will be allocated to source operators free of cost or auctioned (and, if so, the cost of those allowances in the marketplace) and

whether offsets and other measures to moderate the costs of compliance will be available; and, in the event of a carbon tax, the amount of the tax per pound of carbon dioxide ("CO₂") equivalent emitted.

In addition to federal legislative initiatives, state-specific initiatives may also impact our business. While Arizona has no pending legislation and no proposed agency rule regulating GHGs in Arizona, the California legislature enacted AB 32 and SB 1368 in 2006 to address GHG emissions. In October 2011, the California Air Resources Board approved final regulations that established a state-wide cap on GHG emissions beginning on January 1, 2013 and established a GHG allowance trading program under that cap. The first phase of the program, which applies to, among other entities, importers of electricity, commenced on January 1, 2013. Under the program, entities selling electricity into California, including APS, must hold carbon allowances to cover GHG emissions associated with electricity sales into California from outside the state. APS is authorized to recover the cost of these carbon allowances through the PSA.

Regulatory Initiatives. In 2009, EPA determined that GHG emissions endanger public health and welfare. As a result of this "endangerment finding," EPA determined that the Clean Air Act required new regulatory requirements for new and modified major GHG emitting sources, including power plants. APS will generally be required to consider the impact of GHG emissions as part of its traditional New Source Review ("NSR") analysis for new major sources and major modifications to existing plants.

On June 2, 2014, EPA issued two proposed rules to regulate GHG emissions from modified and reconstructed electric generating units ("EGUs") pursuant to Section 111(b) of the Clean Air Act and existing fossil fuel-fired power plants pursuant to Clean Air Act Section 111(d).

On August 3, 2015, EPA finalized carbon pollution standards for existing, new, modified, and reconstructed EGUs. EPA's final rules require newly built fossil fuel-fired EGUs, along with those undergoing modification or reconstruction, to meet CO₂ performance standards based on a combination of best operating practices and equipment upgrades. EPA established separate performance standards for two types of EGUs: stationary combustion turbines, typically natural gas; and electric utility steam generating units, typically coal.

With respect to existing power plants, EPA's recently finalized "Clean Power Plan" imposes state-specific goals or targets to achieve reductions in CO₂ emission rates from existing EGUs measured from a 2012 baseline. In a significant change from the proposed rule, EPA's final performance standards apply directly to specific units based upon their fuel-type and configuration (i.e., coal- or oil-fired steam plants versus combined cycle natural gas plants). As such, each state's goal is an emissions performance standard that reflects the fuel mix employed by the EGUs in operation in those states. The final rule provides guidelines to states to help develop their plans for meeting the interim (2022-2029) and final (2030 and beyond) emission performance standards, with three distinct compliance periods within that timeframe. States were originally required to submit their plans to EPA by September 2016, with an optional two-year extension provided to states establishing a need for additional time; however, this timing will be impacted by the court-imposed stay described below.

Prior to the court-imposed stay described below, ADEQ, with input from a technical working group comprised of Arizona utilities and other stakeholders, was working to develop a compliance plan for submittal to EPA. Since the imposition of the stay, ADEQ is continuing to assess alternatives while completing outreach and soliciting feedback from stakeholders. In addition to these ongoing state proceedings, EPA has taken public comments on proposed model rules and a proposed federal compliance plan, which included consideration as to how the Clean Power Plan will apply to EGUs on tribal land such as the Navajo Nation.

The legality of the Clean Power Plan is being challenged in the U.S. Court of Appeals for the D.C. Circuit; the parties raising this challenge include, among others, the ACC. On February 9, 2016, the U.S.

Supreme Court granted a stay of the Clean Power Plan pending judicial review of the rule, which temporarily delays compliance obligations under the Clean Power Plan. We cannot predict the extent of the delay.

With respect to our Arizona generating units, we are currently evaluating the range of compliance options available to ADEQ, including whether Arizona deploys a rate- or mass-based compliance plan. Based on the fuel-mix and location of our Arizona EGUs, and the significant investments we have made in renewable generation and demand-side energy efficiency, if ADEQ selects a rate-based compliance plan, we believe that we will be able to comply with the Clean Power Plan for our Arizona generating units in a manner that will not have material financial or operational impacts to the Company. On the other hand, if ADEQ selects a mass-based approach to compliance with the Clean Power Plan, our annual cost of compliance could be material. These costs could include costs to acquire mass-based compliance allowances.

As to our facilities on the Navajo Nation, EPA has yet to determine whether or to what extent EGUs on the Navajo Nation will be required to comply with the Clean Power Plan. EPA has proposed to determine that it is necessary or appropriate to impose a federal plan on the Navajo Nation for compliance with the Clean Power Plan. In response, we filed comments with EPA advocating that such a federal plan is neither necessary nor appropriate to protect air quality on the Navajo Nation. If EPA reaches a determination that is consistent with our preferred approach for the Navajo Nation, we believe the Clean Power Plan will not have material financial or operational impacts on our operations within the Navajo Nation.

Alternatively, if EPA determines that a federal plan is necessary or appropriate for the Navajo Nation, and depending on our need for future operations at our EGUs located there, we may be unable to comply with the federal plan unless we acquire mass-based allowances or emission rate credits within established carbon trading markets, or curtail our operations. Subject to the uncertainties set forth below, and assuming that EPA establishes a federal plan for the Navajo Nation that requires carbon allowances or credits to be surrendered for plan compliance, it is possible we will be required to purchase some quantity of credits or allowances, the cost of which could be material.

Because ADEQ has not issued its plan for Arizona, and because we do not know whether EPA will decide to impose a plan or, if so, what that plan will require, there are a number of uncertainties associated with our potential cost exposure. These uncertainties include: whether judicial review will result in the Clean Power Plan being vacated in whole or in part or, if not, the extent of any resulting compliance deadline delays; whether any plan will be imposed for EGUs on the Navajo Nation; the future existence and liquidity of allowance or credit compliance trading markets; the applicability of existing contractual obligations with current and former owners of our participant-owned coal-fired EGUs; the type of federal or state compliance plan (either rate- or mass-based); whether or not the trading of allowances or credits will be authorized mechanisms for compliance with any final EPA or ADEQ plan; and how units that have been closed will be treated for allowance or credit allocation purposes.

In the event that the incurrence of compliance costs is not economically viable or prudent for our operations in Arizona or on the Navajo Nation, or if we do not have the option of acquiring allowances to account for the emissions from our operations, we may explore other options, including reduced levels of output or potential plant closures, as alternatives to purchasing allowances. Given these uncertainties, our analysis of the available compliance options remains ongoing, and additional information or considerations may arise that change our expectations.

Company Response to Climate Change Initiatives. We have undertaken a number of initiatives that address emission concerns, including renewable energy procurement and development, promotion of programs and rates that promote energy conservation, renewable energy use, and energy efficiency. (See "Energy Sources and Resource Planning - Current and Future Resources" above for details of these plans and

initiatives.) APS currently has a diverse portfolio of renewable resources, including solar, wind, geothermal, biogas, and biomass, and we expect the percentage of renewable energy in our resource portfolio to increase over the coming years.

APS prepares an inventory of GHG emissions from its operations. This inventory is reported to EPA under the EPA GHG Reporting Program and is voluntarily communicated to the public in Pinnacle West's annual Corporate Responsibility Report, which is available on our website (www.pinnaclewest.com). The report provides information related to the Company and its approach to sustainability and its workplace and environmental performance. The information on Pinnacle West's website, including the Corporate Responsibility Report, is not incorporated by reference into or otherwise a part of this report.

EPA Environmental Regulation

Regional Haze Rules. In 1999, EPA announced regional haze rules to reduce visibility impairment in national parks and wilderness areas. The rules require states (or, for sources located on tribal land, EPA) to determine what pollution control technologies constitute the BART for certain older major stationary sources, including fossil-fired power plants. EPA subsequently issued the Clean Air Visibility Rule, which provides guidelines on how to perform a BART analysis.

The Four Corners and Navajo Plant participants' obligations to comply with EPA's final BART determinations (and Cholla's obligations to comply with ADEQ's and EPA's determinations), coupled with the financial impact of potential future climate change legislation, other environmental regulations, and other business considerations, could jeopardize the economic viability of these plants or the ability of individual participants to continue their participation in these plants.

Cholla. APS believes that EPA's original 2012 final rule establishing controls constituting BART for Cholla, which would require installation of selective catalytic reduction ("SCR") controls with a cost to APS of approximately \$100 million is unsupported and that EPA had no basis for disapproving Arizona's State Implementation Plan ("SIP") and promulgating a Federal Implementation Plan ("FIP") that is inconsistent with the state's considered BART determinations under the regional haze program. Accordingly, on February 1, 2013, APS filed a Petition for Review of the final BART rule in the United States Court of Appeals for the Ninth Circuit. Briefing in the case was completed in February 2014.

In September 2014, APS met with EPA to propose a compromise BART strategy. Pending certain regulatory approvals, APS would permanently close Cholla Unit 2 and cease burning coal at Units 1 and 3 by the mid-2020s. (See Note 3 for details related to the resulting regulatory asset.) APS made the proposal with the understanding that additional emission control equipment is unlikely to be required in the future because retiring and/or converting the units as contemplated in the proposal is more cost effective than, and will result in increased visibility improvement over, the current BART requirements for NOx imposed on the Cholla units under EPA's BART FIP. APS's proposal involves state and federal rulemaking processes. In light of these ongoing administrative proceedings, on February 19, 2015, APS, PacifiCorp (owner of Cholla Unit 4), and EPA jointly moved the court to sever and hold in abeyance those claims in the litigation pertaining to Cholla pending regulatory actions by the state and EPA. The court granted the parties' unopposed motion on February 20, 2015.

On October 16, 2015, ADEQ issued a revised operating permit for Cholla, which incorporates APS's proposal, and subsequently submitted a proposed revision to the SIP to the EPA, which would incorporate the new permit terms. On June 30, 2016, EPA issued a proposed rule approving a revision to the Arizona SIP that incorporates APS's compromise approach for compliance with the Regional Haze program. EPA signed the final rule approving the Agency's proposal on January 13, 2017. Once the final rule is published in the Federal Register, parties have 60 days to file a petition for review in the Ninth Circuit Court of Appeals. APS cannot

predict at this time whether such petitions will be filed or if they will be successful. In addition, under the terms of an executive memorandum issued on January 20, 2017, this final rule will not be published in the Federal Register until after it has been reviewed by an appointee of the President. We cannot predict when such review will occur and what may result from the additional review.

Four Corners. Based on EPA's final standards, APS estimates that its 63% share of the cost of required controls for Four Corners Units 4 and 5 would be approximately \$400 million. In addition, APS and El Paso entered into an asset purchase agreement providing for the purchase by APS, or an affiliate of APS, of El Paso's 7% interest in Four Corners Units 4 and 5. 4CA purchased the El Paso interest on July 6, 2016. NTEC has the option to purchase the interest within a certain timeframe pursuant to an option granted to NTEC. In December 2015, NTEC provided notice of its intent to exercise the option. The cost of the pollution controls related to the 7% interest is approximately \$45 million, which will be assumed by the ultimate owner of the 7% interest.

Navajo Plant. On July 28, 2014, EPA issued a final Navajo Plant BART rule. APS estimates that its share of costs for upgrades at the Navajo Plant, based on EPA's FIP, could be up to approximately \$200 million. In October 2014, a coalition of environmental groups, an Indian tribe and others filed petitions for review in the United States Court of Appeals for the Ninth Circuit asking the Court to review EPA's final BART rule for the Navajo Plant. We cannot predict the outcome of this review process. See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities - Navajo Generating Station" above for information regarding future plans for the Navajo Plant.

Mercury and other Hazardous Air Pollutants. In 2011, EPA issued rules establishing maximum achievable control technology standards to regulate emissions of mercury and other hazardous air pollutants from fossil-fired plants. APS estimates that the cost for the remaining equipment necessary to meet these standards is approximately \$8 million for Cholla. No additional equipment is needed for Four Corners Units 4 and 5 to comply with these rules. SRP, the operating agent for the Navajo Plant, estimates that APS's share of costs for equipment necessary to comply with the rules is approximately \$1 million, the majority of which has already been incurred. Litigation concerning the rules, including supplemental analyses EPA has prepared in support of the MATS regulation, is ongoing. These proceedings do not materially impact APS. Regardless of the results from further judicial or administrative proceedings concerning the MATS rulemaking, the Arizona State Mercury Rule, the stringency of which is roughly equivalent to that of MATS, would still apply to Cholla.

Coal Combustion Waste. On December 19, 2014, EPA issued its final regulations governing the handling and disposal of CCR, such as fly ash and bottom ash. The rule regulates CCR as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act ("RCRA") and establishes national minimum criteria for existing and new CCR landfills and surface impoundments and all lateral expansions consisting of location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post closure care, and recordkeeping, notification, and Internet posting requirements. The rule generally requires any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving CCR and either retrofit or close, and further requires the closure of any CCR landfill or surface impoundment that cannot meet the applicable performance criteria for location restrictions or structural integrity. While EPA has chosen to regulate the disposal of CCR in landfills and surface impoundments as non-hazardous waste under the final rule, the agency makes clear that it will continue to evaluate any risks associated with CCR disposal and leaves open the possibility that it may regulate CCR as a hazardous waste under RCRA Subtitle C in the future.

On December 16, 2016, President Obama signed the Water Infrastructure Improvements for the Nation ("WIIN") Act into law, which contains a number of provisions requiring EPA to modify the self-implementing provisions of the Agency's current CCR rules under Subtitle D. Such modifications include new EPA authority to directly enforce the CCR rules through the use of administrative orders and providing states, like Arizona, where the Cholla facility is located, the option of developing CCR disposal unit permitting programs, subject to EPA approval. For facilities in states that do not develop state-specific permitting programs, EPA is required to develop a federal permit program, pending the availability of congressional appropriations. By contrast, for facilities located within the boundaries of Native American tribal reservations, such as the Navajo Nation, where the Navajo Plant and Four Corners facilities are located, EPA is required to develop a federal permit program regardless of appropriated funds. Because EPA has yet to undertake rulemaking proceedings to implement the CCR provisions of the WIIN Act, and Arizona has yet to determine whether it will develop a state-specific permitting program, it is unclear what effects the CCR provisions of the WIIN Act will have on APS's management of CCR.

APS currently disposes of CCR in ash ponds and dry storage areas at Cholla and Four Corners. APS estimates that its share of incremental costs to comply with the CCR rule for Four Corners is approximately \$15 million. APS is currently evaluating compliance alternatives for Cholla and estimates that its share of incremental costs to comply with the CCR rule for this plant is in the range of \$5 million to \$40 million based upon which compliance alternatives are ultimately selected. The Navajo Plant currently disposes of CCR in a dry landfill storage area. APS estimates that its share of incremental costs to comply with the CCR rule for the Navajo Plant is approximately \$1 million, the majority of which has already been incurred. Additionally, the CCR rule requires ongoing groundwater monitoring. Depending upon the results of such monitoring at each of Cholla, Four Corners and the Navajo Plant, we may be required to take corrective actions, the costs of which we are unable to reasonably estimate at this time.

Pursuant to a June 24, 2016 order by the D.C. Circuit Court of Appeals in the litigation by industry- and environmental-groups challenging EPA's CCR regulations, within the next three years EPA is required to complete a rulemaking proceeding concerning whether or not boron must be included on the list of groundwater constituents that might trigger corrective action under EPA's CCR rules. EPA is not required to take final action approving the inclusion of boron, but EPA must propose and consider its inclusion. Should EPA take final action adding boron to the list of groundwater constituents that might trigger corrective action, any resulting corrective action measures may increase APS's costs of compliance with the CCR rule at our coal-fired generating facilities. At this time, though, APS cannot predict when EPA will commence its rulemaking concerning boron or the eventual results of those proceedings.

Effluent Limitation Guidelines. On September 30, 2015, EPA finalized revised effluent limitation guidelines establishing technology-based wastewater discharge limitations for fossil-fired EGUs. EPA's final regulation targets metals and other pollutants in wastewater streams originating from fly ash and bottom ash handling activities, scrubber activities, and coal ash disposal leachate. Based upon an earlier set of preferred alternatives, the final effluent limitations generally require chemical precipitation and biological treatment for flue gas desulfurization scrubber wastewater, "zero discharge" from fly ash and bottom ash handling, and impoundment for coal ash disposal leachate. Compliance with these limitations will be required in connection with National Pollution Discharge Elimination System ("NPDES") discharge permit renewals, which occur in five-year intervals, that arise between 2018 and 2023. Until a draft NPDES permit for Four Corners is proposed during that timeframe, we are uncertain what will be required to control these discharges in compliance with the finalized effluent limitations at that facility. Cholla and the Navajo Plant do not require NPDES permitting.

Ozone National Ambient Air Quality Standards. On October 1, 2015, EPA finalized revisions to the primary ground-level ozone national ambient air quality standards ("NAAQS") at a level of 70 parts per billion

("ppb"). With ozone standards becoming more stringent, our fossil generation units will come under increasing pressure to reduce emissions of nitrogen oxides and volatile organic compounds, and to generate emission offsets for new projects or facility expansions located in ozone nonattainment areas. EPA is expected to designate attainment and nonattainment areas relative to the new 70 ppb standard by October 1, 2017. Depending on when EPA approves attainment designations for the Arizona and Navajo Nation jurisdictions in which our fossil generation units are located, revisions to SIPs and FIPs, respectively, implementing required controls to achieve the new 70 ppb standard are expected to be in place between 2020 and 2021. At this time, because proposed SIPs and FIPs implementing the revised ozone NAAQSs have yet to be released, APS is unable to predict what impact the adoption of these standards may have on the Company. APS will continue to monitor these standards as they are implemented within the jurisdictions affecting APS.

Superfund-Related Matters. The Comprehensive Environmental Response Compensation and Liability Act ("Superfund") establishes liability for the cleanup of hazardous substances found contaminating the soil, water or air. Those who generated, transported or disposed of hazardous substances at a contaminated site are among those who are potentially responsible parties ("PRPs"). PRPs may be strictly, and often are jointly and severally, liable for clean-up. On September 3, 2003, EPA advised APS that EPA considers APS to be a PRP in the Motorola 52nd Street Superfund Site, Operable Unit 3 ("OU3") in Phoenix, Arizona. APS has facilities that are within this Superfund site. APS and Pinnacle West have agreed with EPA to perform certain investigative activities of the APS facilities within OU3. In addition, on September 23, 2009, APS agreed with EPA and one other PRP to voluntarily assist with the funding and management of the site-wide groundwater remedial investigation and feasibility study work plan ("RI/FS"). The OU3 working group parties have agreed to a schedule with EPA that calls for the submission of a revised draft RI/FS by June 2017. We estimate that our costs related to this investigation and study will be approximately \$2 million. We anticipate incurring additional expenditures in the future, but because the overall investigation is not complete and ultimate remediation requirements are not yet finalized, at the present time expenditures related to this matter cannot be reasonably estimated.

On August 6, 2013, the Roosevelt Irrigation District ("RID") filed a lawsuit in Arizona District Court against APS and 24 other defendants, alleging that RID's groundwater wells were contaminated by the release of hazardous substances from facilities owned or operated by the defendants. The lawsuit also alleges that, under Superfund laws, the defendants are jointly and severally liable to RID. The allegations against APS arise out of APS's current and former ownership of facilities in and around OU3. As part of a state governmental investigation into groundwater contamination in this area, on January 25, 2015, ADEQ sent a letter to APS seeking information concerning the degree to which, if any, APS's current and former ownership of these facilities may have contributed to groundwater contamination in this area. APS responded to ADEQ on May 4, 2015. On December 16, 2016, two RID contractors filed ancillary lawsuits for recovery of costs against APS and the other defendants. We are unable to predict the outcome of these matters; however, we do not expect the outcome to have a material impact on our financial position, results of operations or cash flows.

Manufactured Gas Plant Sites. Certain properties which APS now owns or which were previously owned by it or its corporate predecessors were at one time sites of, or sites associated with, manufactured gas plants. APS is taking action to voluntarily remediate these sites. APS does not expect these matters to have a material adverse effect on its financial position, results of operations or cash flows.

Federal Agency Environmental Lawsuit Related to Four Corners

On April 20, 2016, several environmental groups filed a lawsuit against OSM and other federal agencies in the District of Arizona in connection with their issuance of the approvals that extended the life of Four Corners and the adjacent mine. The lawsuit alleges that these federal agencies violated both the ESA and NEPA in providing the federal approvals necessary to extend operations at the Four Corners Power Plant and

the adjacent Navajo Mine past July 6, 2016. APS filed a motion to intervene in the proceedings, which was granted on August 3, 2016. Briefing on the merits of this litigation is expected to extend through May 2017. On September 15, 2016, NTEC, the company that owns the adjacent mine, filed a motion to intervene for the purpose of dismissing the lawsuit based on NTEC's tribal sovereign immunity. Because the court has placed a stay on all litigation deadlines pending its decision regarding NTEC's motion to dismiss, the schedule for briefing and the anticipated timeline for completion of this litigation will likely be extended. We cannot predict the outcome of this matter or its potential effect on Four Corners.

Navajo Nation Environmental Issues

Four Corners and the Navajo Plant are located on the Navajo Reservation and are held under easements granted by the federal government, as well as leases from the Navajo Nation. See "Energy Sources and Resource Planning - Generation Facilities - Coal-Fueled Generating Facilities" above for additional information regarding these plants.

In July 1995, the Navajo Nation enacted the Navajo Nation Air Pollution Prevention and Control Act, the Navajo Nation Safe Drinking Water Act, and the Navajo Nation Pesticide Act (collectively, the "Navajo Acts"). The Navajo Acts purport to give the Navajo Nation Environmental Protection Agency authority to promulgate regulations covering air quality, drinking water, and pesticide activities, including those activities that occur at Four Corners and the Navajo Plant. On October 17, 1995, the Four Corners participants and the Navajo Plant participants each filed a lawsuit in the District Court of the Navajo Nation, Window Rock District, challenging the applicability of the Navajo Acts as to Four Corners and the Navajo Plant. The Court has stayed these proceedings pursuant to a request by the parties, and the parties are seeking to negotiate a settlement.

In April 2000, the Navajo Nation Council approved operating permit regulations under the Navajo Nation Air Pollution Prevention and Control Act. APS believes the Navajo Nation exceeded its authority when it adopted the operating permit regulations. On July 12, 2000, the Four Corners participants and the Navajo Plant participants each filed a petition with the Navajo Supreme Court for review of these regulations. Those proceedings have been stayed, pending the settlement negotiations mentioned above. APS cannot currently predict the outcome of this matter.

On May 18, 2005, APS, SRP, as the operating agent for the Navajo Plant, and the Navajo Nation executed a Voluntary Compliance Agreement to resolve their disputes regarding the Navajo Nation Air Pollution Prevention and Control Act. As a result of this agreement, APS sought, and the courts granted, dismissal of the pending litigation in the Navajo Nation Supreme Court and the Navajo Nation District Court, to the extent the claims relate to the Clean Air Act. The agreement does not address or resolve any dispute relating to other Navajo Acts. APS cannot currently predict the outcome of this matter.

Water Supply

Assured supplies of water are important for APS's generating plants. At the present time, APS has adequate water to meet its needs. The Four Corners region, in which Four Corners is located, has historically experienced drought conditions that may affect the water supply for the plants if adequate moisture is not received in the watershed that supplies the area. However, during the past 12 months the region has received snowfall and precipitation sufficient to recover the Navajo Reservoir to an optimum operating level, reducing the probability of shortage in future years. Although the watershed and reservoirs are in a good condition at this time, APS is continuing to work with area stakeholders to implement agreements to minimize the effect, if any, on future drought conditions that could have an impact on operations of its plants.

Conflicting claims to limited amounts of water in the southwestern United States have resulted in numerous court actions, which, in addition to future supply conditions, have the potential to impact APS's operations.

San Juan River Adjudication. Both groundwater and surface water in areas important to APS's operations have been the subject of inquiries, claims, and legal proceedings, which will require a number of years to resolve. APS is one of a number of parties in a proceeding, filed March 13, 1975, before the Eleventh Judicial District Court in New Mexico to adjudicate rights to a stream system from which water for Four Corners is derived. An agreement reached with the Navajo Nation in 1985, however, provides that if Four Corners loses a portion of its rights in the adjudication, the Navajo Nation will provide, for an agreed upon cost, sufficient water from its allocation to offset the loss. In addition, APS is a party to a water contract that allows the company to secure water for Four Corners in the event of a water shortage and is a party to a shortage sharing agreement, which provides for the apportionment of water supplies to Four Corners in the event of a water shortage in the San Juan River Basin.

Gila River Adjudication. A summons served on APS in early 1986 required all water claimants in the Lower Gila River Watershed in Arizona to assert any claims to water on or before January 20, 1987, in an action pending in Arizona Superior Court. Palo Verde is located within the geographic area subject to the summons. APS's rights and the rights of the other Palo Verde participants to the use of groundwater and effluent at Palo Verde are potentially at issue in this action. As operating agent of Palo Verde, APS filed claims that dispute the court's jurisdiction over the Palo Verde participants' groundwater rights and their contractual rights to effluent relating to Palo Verde. Alternatively, APS seeks confirmation of such rights. Several of APS's other power plants are also located within the geographic area subject to the summons. APS's claims dispute the court's jurisdiction over APS's groundwater rights with respect to these plants. Alternatively, APS seeks confirmation of such rights. In November 1999, the Arizona Supreme Court issued a decision confirming that certain groundwater rights may be available to the federal government and Indian tribes. In addition, in September 2000, the Arizona Supreme Court issued a decision affirming the lower court's criteria for resolving groundwater claims. Litigation on both of these issues has continued in the trial court. In December 2005, APS and other parties filed a petition with the Arizona Supreme Court requesting interlocutory review of a September 2005 trial court order regarding procedures for determining whether groundwater pumping is affecting surface water rights. The Arizona Supreme Court denied the petition in May 2007, and the trial court is now proceeding with implementation of its 2005 order. No trial date concerning APS's water rights claims has been set in this matter.

Little Colorado River Adjudication. APS has filed claims to water in the Little Colorado River Watershed in Arizona in an action pending in the Apache County, Arizona, Superior Court, which was originally filed on September 5, 1985. APS's groundwater resource utilized at Cholla is within the geographic area subject to the adjudication and, therefore, is potentially at issue in the case. APS's claims dispute the court's jurisdiction over its groundwater rights. Alternatively, APS seeks confirmation of such rights. Other claims have been identified as ready for litigation in motions filed with the court. No trial date concerning APS's water rights claims has been set in this matter.

Although the above matters remain subject to further evaluation, APS does not expect that the described litigation will have a material adverse impact on its financial position, results of operations, or cash flows.

BUSINESS OF OTHER SUBSIDIARIES

Bright Canyon Energy

On July 31, 2014, Pinnacle West announced its creation of a wholly-owned subsidiary, BCE. BCE will focus on new growth opportunities that leverage the Company's core expertise in the electric energy industry. BCE's first initiative is a 50/50 joint venture with BHE U.S. Transmission LLC, a subsidiary of Berkshire Hathaway Energy Company. The joint venture, named TransCanyon, is pursuing independent transmission opportunities within the eleven states that comprise the Western Electricity Coordinating Council, excluding opportunities related to transmission service that would otherwise be provided under the tariffs of the retail service territories of the venture partners' utility affiliates. TransCanyon continues to pursue transmission development opportunities in the western United States consistent with its strategy.

On March 29, 2016, TransCanyon entered into a strategic alliance agreement with Pacific Gas and Electric Company ("PG&E") to jointly pursue competitive transmission opportunities solicited by the CAISO, the operator for the majority of California's transmission grid. TransCanyon and PG&E intend to jointly engage in the development of future transmission infrastructure and compete to develop, build, own and operate transmission projects approved by the CAISO.

El Dorado

El Dorado owns minority interests in several energy-related investments and Arizona community-based ventures. El Dorado's short-term goal is to prudently realize the value of its existing investments. As of December 31, 2016, El Dorado had total assets of approximately \$11 million. El Dorado is not expected to contribute in any material way to our future financial performance, nor will it require any material amounts of capital over the next three years.

4CA

See "Business of Arizona Public Service Company - Energy Sources and Resource Planning - Generating Facilities - Coal-Fueled Generating Facilities - Four Corners" above for information regarding 4CA. As of December 31, 2016, 4CA had total assets of approximately \$69 million.

OTHER INFORMATION

Subpoenas

Pinnacle West has received grand jury subpoenas issued in connection with an investigation by the office of the United States Attorney for the District of Arizona. The subpoenas seek information principally pertaining to the 2014 statewide election races in Arizona for Secretary of State and for positions on the ACC. The subpoenas request records involving certain Pinnacle West officers and employees, including the Company's Chief Executive Officer, as well as communications between Pinnacle West personnel and a former ACC Commissioner. Pinnacle West is cooperating fully with the United States Attorney's office in this matter.

Other Information

Pinnacle West, APS and El Dorado are all incorporated in the State of Arizona. BCE and 4CA are incorporated in Delaware. Additional information for each of these companies is provided below:

	Principal Executive Office Address	Year of Incorporation	Approximate Number of Employees at December 31, 2016
Pinnacle West	400 North Fifth Street Phoenix, AZ 85004	1985	89
APS	400 North Fifth Street P.O. Box 53999 Phoenix, AZ 85072-3999	1920	6,244
BCE	400 East Van Buren Phoenix, AZ 85004	2014	6
El Dorado	400 East Van Buren Phoenix, AZ 85004	1983	—
4CA	400 North Fifth Street Phoenix, AZ 85004	2016	—
Total			6,339

The APS number includes employees at jointly-owned generating facilities (approximately 2,628 employees) for which APS serves as the generating facility manager. Approximately 1,613 APS employees are union employees, represented by the International Brotherhood of Electrical Workers ("IBEW") or the United Security Professionals of America ("USPA"). APS concluded negotiations with IBEW representatives over the new collective bargaining agreement in April 2015, and the new agreement is in place until March 31, 2018. The contract provides an average wage increase of 2.0% for the first year, 2.25% for the second year and 3.0% for the third year. The Company concluded negotiations with the USPA over the terms of a new collective bargaining agreement in May of 2014, and the new agreement is in place until May 31, 2017.

WHERE TO FIND MORE INFORMATION

We use our website (www.pinnaclewest.com) as a channel of distribution for material Company information. The following filings are available free of charge on our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the Securities and Exchange Commission ("SEC"): Annual Reports on Form 10-K, definitive proxy statements for our annual shareholder meetings, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports. Our board and committee charters, Code of Ethics for Financial Executives, Code of Ethics and Business Practices and other corporate governance information is also available on the Pinnacle West website. Pinnacle West will post any amendments to the Code of Ethics for Financial Executives and Code of Ethics and Business Practices, and any waivers that are required to be disclosed by the rules of either the SEC or the New York Stock Exchange, on its website. The information on Pinnacle West's website is not incorporated by reference into this report.

You can request a copy of these documents, excluding exhibits, by contacting Pinnacle West at the following address: Pinnacle West Capital Corporation, Office of the Corporate Secretary, Mail Station 8602, P.O. Box 53999, Phoenix, Arizona 85072-3999 (telephone 602-250-4400).

EXHIBIT F

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POLITICAL PARTICIPATION POLICY

[Home](#) > [About Us](#) > [Corporate Governance](#) > [Political Participation Policy](#)

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Political Participation Policy

2016

1. PURPOSE

1.1. Pinnacle West Capital Corporation ("Pinnacle West", "we" or "the Company") participates in the democratic process to advance our long-term business interests and the interests of our customers, communities and shareholders. We believe that broad political participation contributes to a strong democracy, promotes good government and encourages sound policymaking.

1.1.1. Our company's principal subsidiary, Arizona Public Service Company ("APS") has the responsibility to provide customers in our service territory with safe, reliable and affordable electricity. Because Pinnacle West and APS participate in a wide range of business activities to fulfill this responsibility, policy decisions at the federal, state and local levels can have profound impacts on virtually all aspects of our business.

1.1.2. Our experience and expertise give us an informed perspective on how public policy can affect our company, our customers, our communities, and Arizona's energy future. We have a responsibility to our customers, communities and shareholders to participate in the political process, when appropriate, so that our perspectives are heard and so that we can develop productive working relationships with governmental decision-makers.

1.2. The purpose of this Policy is to promote compliance with all applicable federal, state and local laws, rules, and regulations surrounding political contributions by Pinnacle West in a manner consistent with our values. This Policy also describes our decision-making and oversight processes for political spending and for reporting of political contributions, in which processes both management and our Board of Directors play important roles.

2. POLICY STATEMENTS

2.1. As one of the largest and longest-serving local businesses in Arizona, Pinnacle West takes its commitment to corporate citizenship seriously. Being a good corporate citizen may include being informed about issues, encouraging our employees to volunteer and participate in their communities, speaking publicly about the issues of the day, sponsoring a political action committee and, where permitted by law, considering the contribution of corporate funds to political candidates, political parties, political action committees, and organizations that engage in political activities. These activities may also include independent expenditures, or the sponsoring of a political action committee that engages in independent expenditures, in relation to elections of candidates to office, get-out-the-vote efforts, and ballot initiatives and referenda. In general, a political expenditure is independent when it is not made in cooperation, consultation, or at the request or suggestion of a candidate, a candidate's agent or authorized political committee, or a political party.

2.2. Many factors guide our political contribution decisions. In general, we may support candidates and organizations that share an interest in public policy that furthers our business objectives and promotes our mission of creating a sustainable energy future for Arizona. The Company's contribution decisions are based on what is in the best interests of Pinnacle West and not based on the personal preferences of our executives.

2.3. We do not make corporate contributions to political candidates or office holders where prohibited by law. Arizona law prohibits companies from making political contributions to candidates for Arizona offices. Under no circumstances will any political contribution be given in anticipation of, in recognition of, or in return for any official act.

2.4. We may contribute to entities organized and operating under section 527 of the Internal Revenue Code. These organizations are established primarily for the purpose of influencing the outcome of elections of candidates for public office. We may also use corporate funds to make independent expenditures or to contribute to organizations engaged in lobbying or political campaign activity or that make independent expenditures at the federal, state or local level, as permitted by law.

2.5. Pinnacle West may directly sponsor a registered political action committee that engages in independent expenditures concerning specific candidates, initiatives, or referenda. Pinnacle West is committed to ensuring that any separate sponsored political action committee meets or exceeds any reporting requirements to the various governmental agencies that collect contribution and expenditure data.

2.6. Pinnacle West may participate in federal, state, and local issues through membership in trade associations, which we join to represent various business and industry interests. In addition, we actively promote the economic health of the jurisdictions we serve through our activities with chambers of commerce. Pinnacle West supports many charitable and non-profit organizations that support a variety of community and educational endeavors. These organizations, in turn, are at times actively involved in promoting social welfare missions to our elected leaders. Depending on their roles, any of these organizations may be subject to lobbyist registration and disclosure reporting obligations, with their reports made public by federal and state agencies overseeing lobbying activities.

2.7. Pinnacle West discloses its political contributions as required by law. In addition, we will provide a voluntary annual report of contributions subject to this Policy as set forth in Section 5 below. The report will be posted to our website as part of this Policy not later than March 1 of the succeeding calendar year. We expect those organizations in which we are members or to whom we provide contributions to meet their own obligations to report the Company's contribution to the appropriate government authorities.

3. THE PINNACLE WEST POLITICAL ACTION COMMITTEE

3.1. Pinnacle West encourages its employees to be active members of their communities. Along with participation in civic, charitable and volunteer activities, this includes participation in the political process. All eligible employees of Pinnacle West may make voluntary contributions to the Pinnacle West Political Action Committee ("PNWPAC"). The PNWPAC is a voluntary, nonprofit, non-partisan political association sponsored by Pinnacle West to provide an easy and effective means for eligible employees to become politically involved if they wish to do so.

3.2. The PNWPAC is directed by a board comprised solely of employees, which makes and approves all decisions regarding political contributions and budget. Potential contributions are reviewed by a five-member PNWPAC executive committee, which makes recommendations for contributions to be considered by the PNWPAC board. The articles of organization of the PNWPAC can be found [here](#). Applicable law permits administrative support of PNWPAC from Pinnacle West. PNWPAC provides timely disclosure of its political contributions as required by law.

3.3. Pinnacle West encourages employees to participate in the political process personally by voting and by supporting candidates of their choosing. Such participation is not in the Company's name or on its behalf. Employees will not be reimbursed for personal political contributions or expenses, either directly, through compensation increases, or otherwise.

3.4. Some Pinnacle West employees choose to serve their communities by holding public office. We encourage these employees and appreciate their spirit of public service. Employees of Pinnacle West who wish to campaign for, or serve in, public office must first notify their supervisor and the Senior Vice President of Public Policy.

3.4.1. Employees are not permitted to campaign on work time; nor can they use company resources to further their campaigns. Employees must clearly communicate that they are acting as private individuals, that their views are their own, and that they are not representing or endorsed by the Company.

3.4.2. Employees who hold public office must recuse themselves from matters directly involving Pinnacle West. If an employee in public office is uncertain whether an issue directly affects Pinnacle West, he or she should contact the Senior Vice President of Public Policy.

4. OVERSIGHT

4.1. Corporate contribution decisions are made primarily by our Vice President, Federal Affairs, and Vice President, State and Local Affairs, based on the guidelines and objectives described in

this Policy. These executives typically receive input from other members of our senior management team, including our Chief Executive Officer.

4.2. During the first quarter of each calendar year management reviews with the Corporate Governance Committee of the Board of Directors its anticipated governmental affairs strategies for the year, including the priorities for the Company's political expenditure and lobbying activities. During the year, management periodically reports to the Corporate Governance Committee on the progress of the Company's strategy, including any significant activities not encompassed within the initial strategy discussion. Following each of its meetings, the Corporate Governance Committee provides a summary to the Board of the matters involving political activities, which were discussed at the meeting. In addition, as part of its reporting responsibilities to the Board after year-end, management summarizes the actions taken in furtherance of its governmental affairs strategies during the year.

4.3. At least annually, the Corporate Governance Committee reviews this Policy and recommends to the Board any revisions it deems necessary. Our Board's oversight of our governmental affairs strategy ensures compliance with applicable law and alignment with our policies and Code of Ethics and Business Practices.

5. ANNUAL REPORT OF POLITICAL CONTRIBUTIONS

5.1. In 2016, Pinnacle West made the following contributions to political parties, political action committees, candidates for political office and other entities organized and operating under section 527 of the Internal Revenue Code:

Organization	Contribution
AZ GOP (Arizona Republican Party)	\$175,000
AZ Democratic Party	\$60,000
AZ GOP Victory (Arizona Republican Party)	\$410,000
Dodie Londen	\$25,000
Emerge	\$10,000
Let's Grow Virginia PAC	\$6,000
Common Good, VA PAC	\$5,000
AZ House Victory PAC	\$5,000
AZ Senate Victory PAC	\$5,000
Morning in Nevada PAC	\$2,500
National LT Governors Association	\$10,000
Senate Republican Leadership Fund	\$15,000

5.2. In 2016, Pinnacle West made the following payments to trade associations that may have been used for lobbying-related or other political activities as reported to us by the trade associations. These amounts are not permitted to be deducted as ordinary and necessary business expenses under the Internal Revenue Code:

Organization	Non-Deductible Portion of Dues/Payments
American Legislative Exchange Council	\$10,000

Edison Electric Institute	\$132,150
Nuclear Energy Institute	\$17,306
Arizona Tax Research Association	\$10,617

5.3. In 2016, Pinnacle West made the following payments to entities organized under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code which may have used some of the proceeds for independent political expenditures, including but not limited to ballot initiatives, or lobbying-related or political campaign activities, as permitted by law:¹

Organization	Amount
Arizona Cattle Feeders Association ²	\$400,000
Market Freedom Alliance	\$4,130,500
Expect More Arizona	\$100,000
Republican Governor's Association	\$75,000
Arizona Free Enterprise Club	\$50,000

5.4. In 2016, Pinnacle West made the following independent political expenditures either directly or in support of an independent expenditure political action committee sponsored by the Company:

Organization	Amount
Arizona Coalition for Reliable Electricity	\$4,175,000
Arizonans for Responsible Drug Policy	\$10,000
Arizona Grassroots Action PAC	\$550,000
Yes on Prop 493	\$2,500

6. LINKS TO OFFICIAL REPORTS

6.1. Contributions to federal elections may be found on the Federal Elections Commission website at <http://www.fec.gov/pindex.shtml>.

6.2. Contributions to Arizona state and local elections can be found on the Arizona Secretary of State's website at <https://www.azsos.gov/elections/campaign-finance-reporting> and the Citizens Clean Elections Commission website at <http://www.ccec.state.az.us/en/resources>.

6.3. Reports on the Company's federal lobbying activity can be found on the websites of the U.S. House of Representatives at http://clerk.house.gov/public_disc/financial.aspx and the U.S. Senate at <http://www.senate.gov/legislative/lobbyingdisc.htm#lobbyingdisc=lda>.

1. In addition, Pinnacle West made a post-election contribution of \$5,000 to Trump for America, a 501(c)(4) supporting the Presidential transition team, but which was not engaged in ballot initiatives, lobbying-related or political campaign activities otherwise discussed in this section.

2. 501(c)(5).

[Site Map](#) [Contact Us](#) [Supplier Web](#) [Regulatory Compliance](#)

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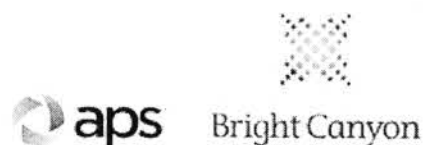
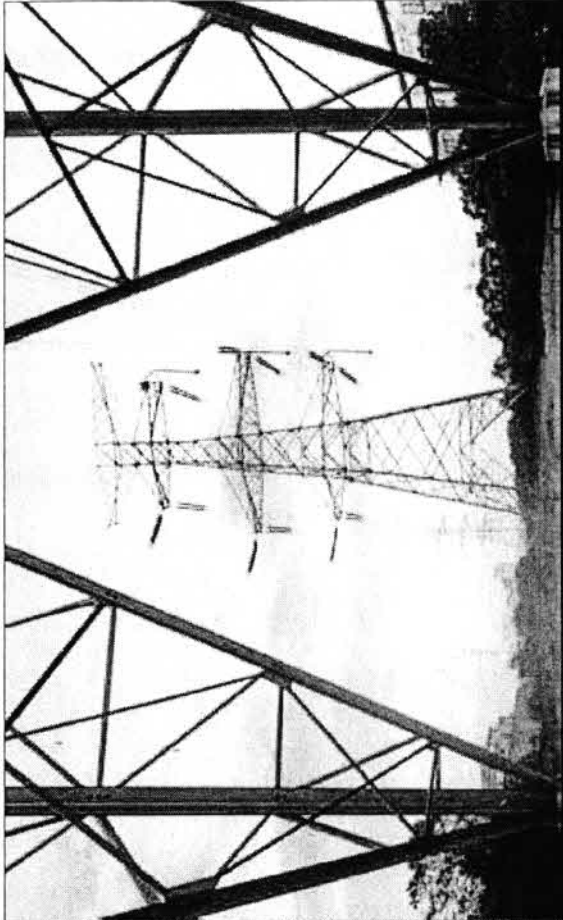
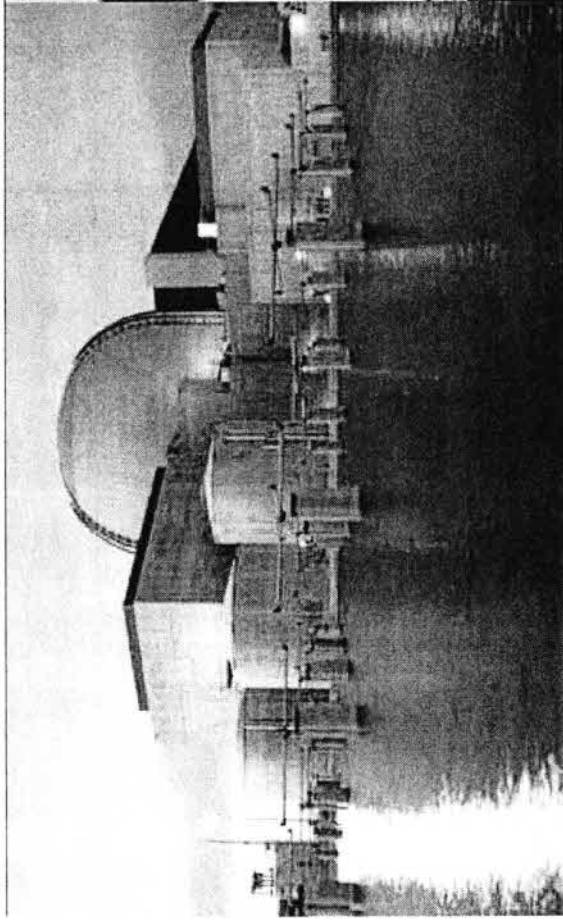


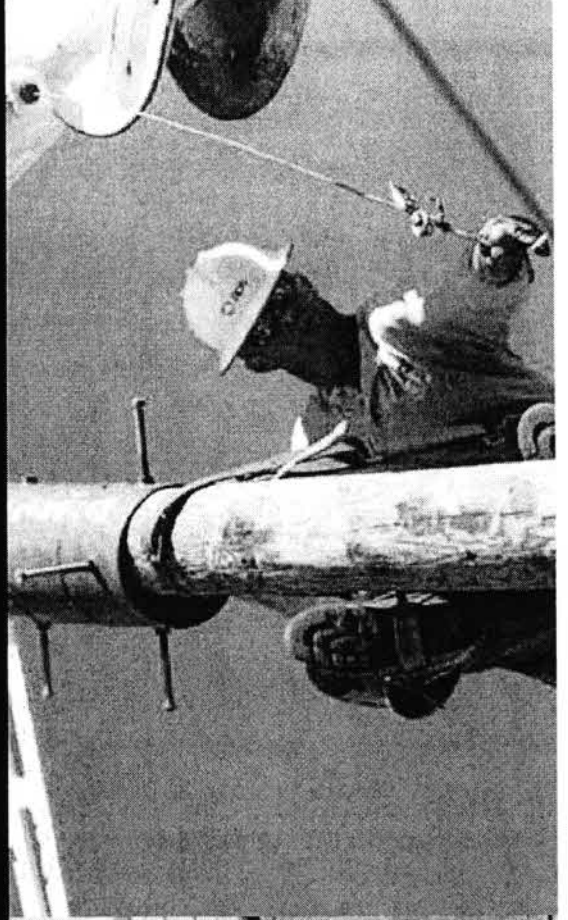
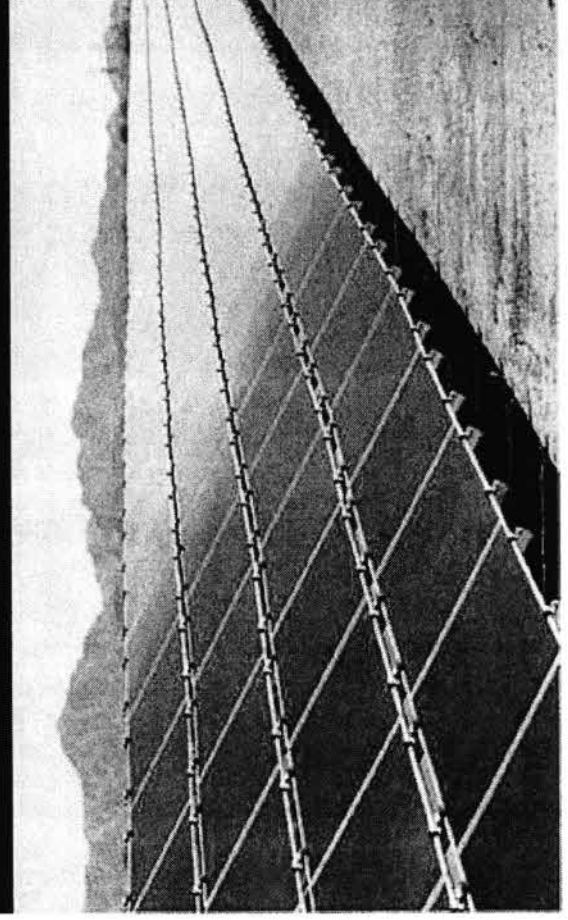
EXHIBIT G



POWERING GROWTH DELIVERING VALUE

Investor Meetings | January 12-13, 2017

PINNACLE WEST
CAPITAL CORPORATION



FORWARD LOOKING STATEMENTS

This presentation contains forward-looking statements based on current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution you not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to: our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels; variations in demand for electricity, including those due to weather seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation; power plant and transmission system performance and outages; competition in retail and wholesale power markets; regulatory and judicial decisions, developments and proceedings; new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets; fuel and water supply availability; our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investments; our ability to meet renewable energy and energy efficiency mandates and recover related costs; risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty; current and future economic conditions in Arizona, including in real estate markets; the development of new technologies which may affect electric sales or delivery; the cost of debt and equity capital and the ability to access capital markets when required; environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions; volatile fuel and purchased power costs; the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements; the liquidity of wholesale power markets and the use of derivative contracts in our business; potential shortfalls in insurance coverage; new accounting requirements or new interpretations of existing requirements; generation, transmission and distribution facility and system conditions and operating costs; the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region; the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and restrictions on dividends or other provisions in our credit agreements and ACC orders. These and other factors are discussed in Risk Factors described in Part I, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, which you should review carefully before placing any reliance on our financial statements, disclosures or earnings outlook. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

VALUE PROPOSITION

We are executing on our financial and operational objectives ...

Financial Strength

- Consolidated earned ROE more than 9.5% (weather-normalized) through 2016
- Annual dividend growth target of 5%, subject to declaration at Board of Director's discretion
- Strong credit ratings and balance sheet
- Rate base growth of 6-7% (2015-2019); investing in a portfolio that is cost-effective and sustainable in a variety of future state scenarios

Leverage to Economic Growth

- Arizona's long-term growth fundamentals remain largely intact, including population growth, job growth and economic development

Operational Excellence

- Best safety performance among peers and top quartile ratings in Power Quality and Reliability
- APS operates the Palo Verde Nuclear Generating Station, the largest nuclear plant in the United States
- Disciplined cost management

... while also advocating to ensure Pinnacle West and Arizona have a sustainable energy future

Developing Technology to Modernize the Grid

- At the forefront of utilities studying and deploying advanced infrastructure to enable reliable and cost-efficient integration of emerging technologies into the grid and with customers

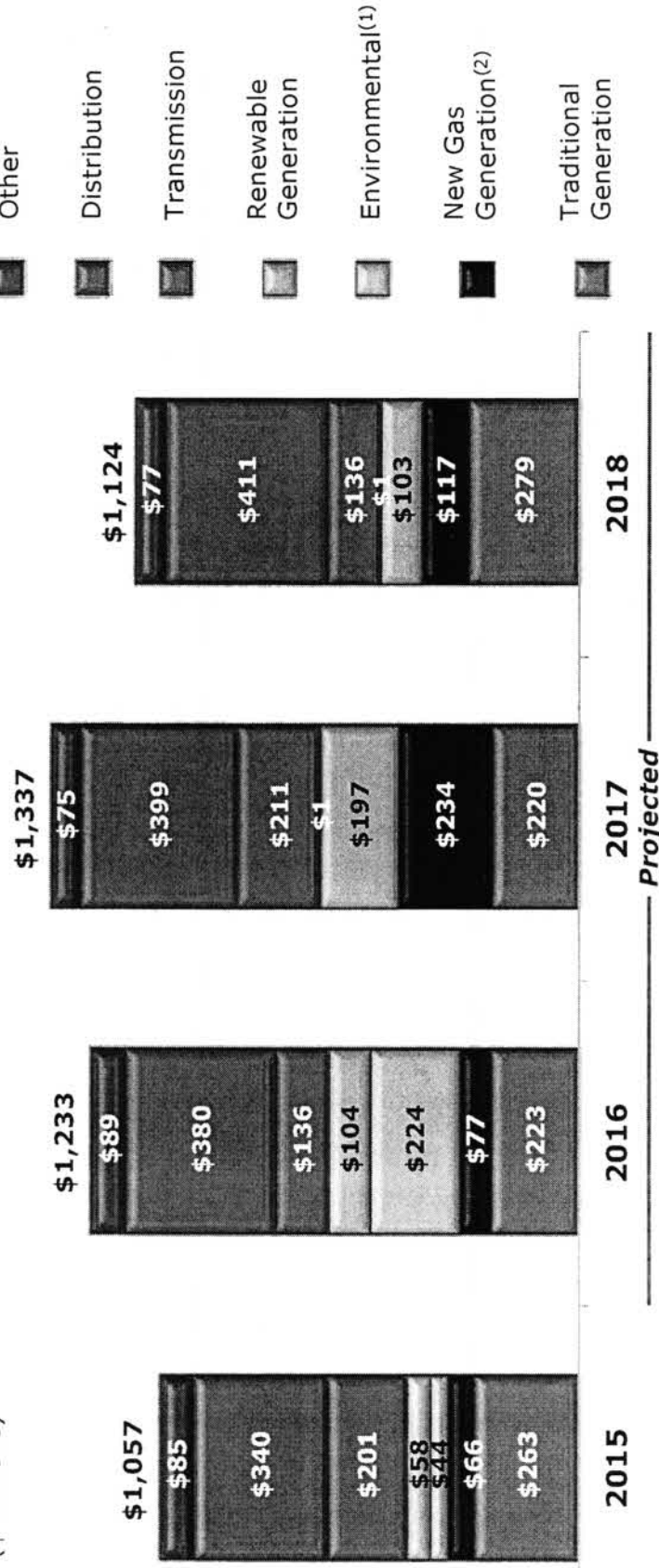
Proactively Addressing Rate Design

- Working with Arizona Corporation Commission and key stakeholders to modernize rates

CAPITAL EXPENDITURES

Capital expenditures are funded primarily through internally generated cash flow

(\$ Millions)



• The table does not include capital expenditures related to 4CA's 7% interest in Four Corners Units 4 and 5 of \$3 million in 2015, \$30 million in 2016 and \$27 million in 2017.

• 2016 - 2018 as disclosed in Third Quarter 2016 Form 10-Q.

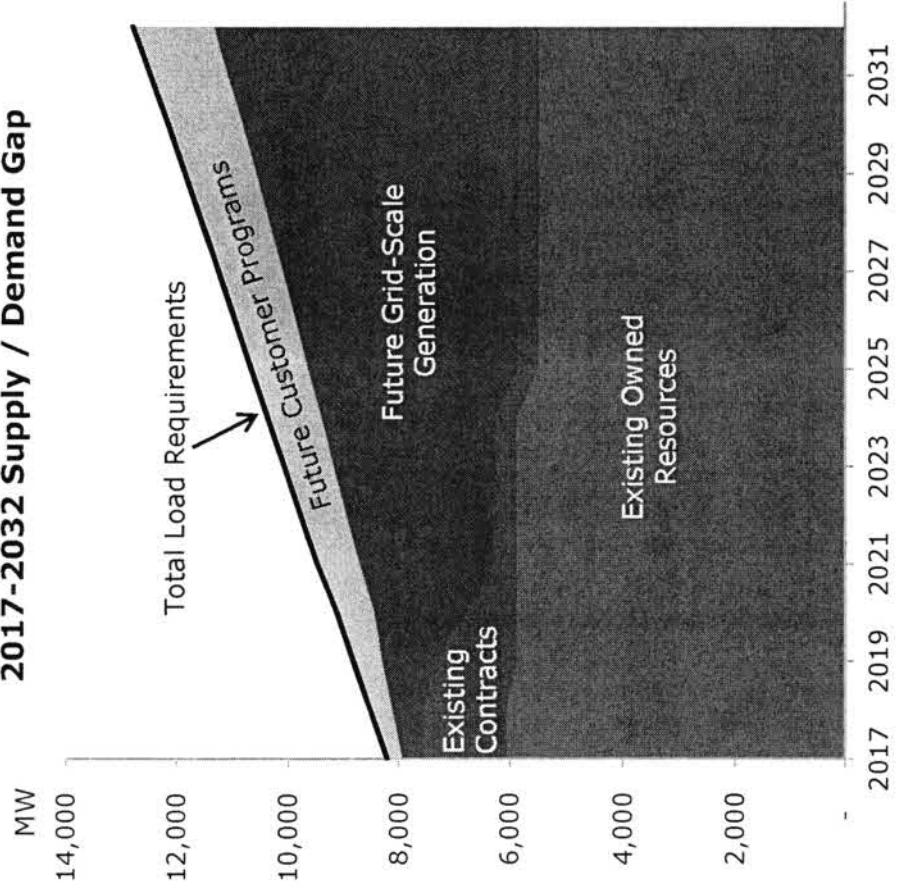
(1) Includes Selective Catalytic Reduction controls at Four Corners with in-service dates of Q4 2017 (Unit 5) and Q1 2018 (Unit 4)

(2) Ocotillo Modernization Project: 2 units scheduled for completion in Q4 2018, 3 units scheduled for completion in Q1 2019

RESOURCE PLANNING

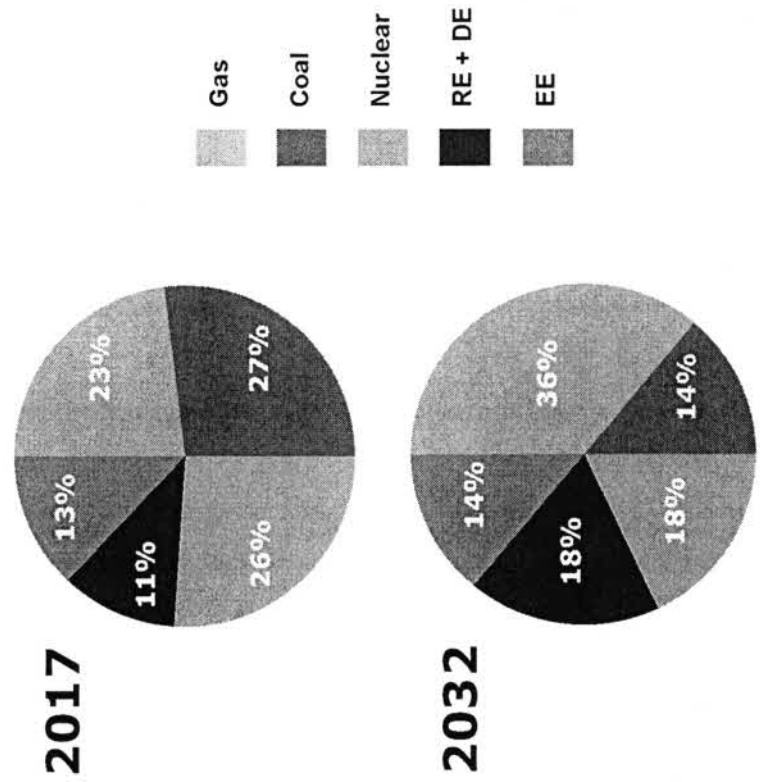
Future resources need projected in excess of 3,500 MW by 2022 and over 5,400 MW by 2027

2017-2032 Supply / Demand Gap



Note: RE = Renewable Energy; DE = Distributed Energy; EE = Energy Efficiency

Composition of Energy Mix by Resource*

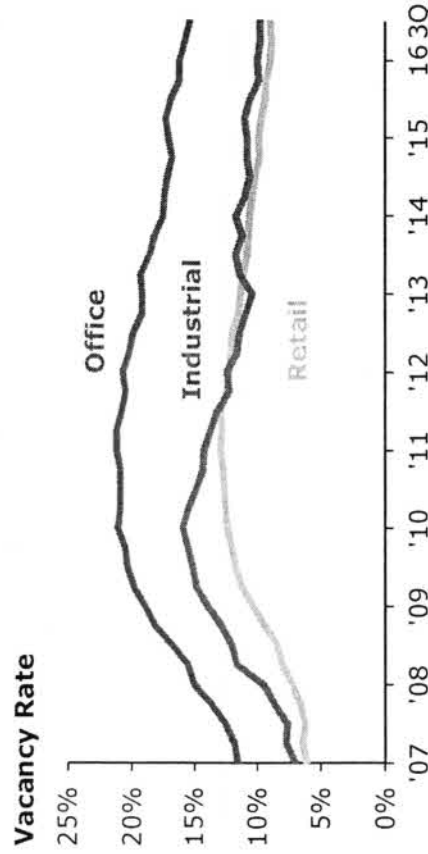


*Data shown is based on the Updated 2017 Preliminary Integrated Resource Plan filed September 30, 2016.

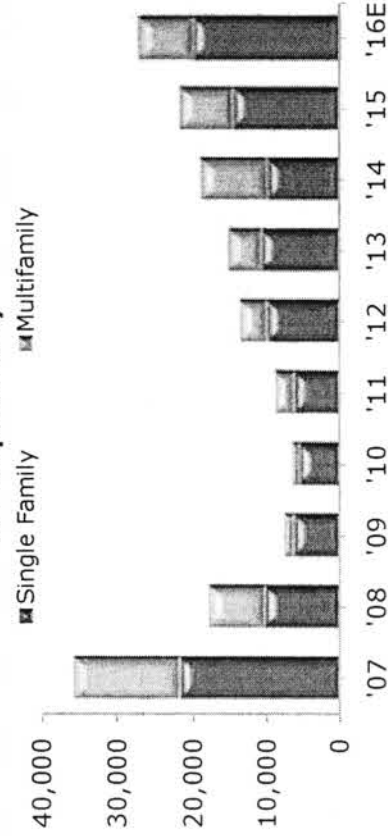
ECONOMIC INDICATORS

Arizona and Metro Phoenix remain attractive places to live and do business

Nonresidential Building Vacancy - Metro Phoenix



Single Family & Multifamily Housing Permits Maricopa County



- ✓ Above-average job growth in construction, financial services and wholesale trade sectors
- ✓ Vacancy rates in office and retail space have fallen to pre-recessionary levels
- ✓ Housing construction on pace to have its best year since 2007
- ✓ Metro Phoenix growth rate 3rd fastest among top 15 metro areas
- U.S. Census Bureau March 2016
- ✓ Arizona ranked 1st for projected job growth
- Forbes September 2015

THE GRID IS EVOLVING – DRIVING NEW INVESTMENTS IN TECHNOLOGY

- Grid stability, power quality and reliability remain the core of a sustainable electrical system
- APS is at the forefront of utilities designing and planning for the next generation electric grid
- New technology advances and changing customer needs are transforming the way we use the grid

Drivers for Change

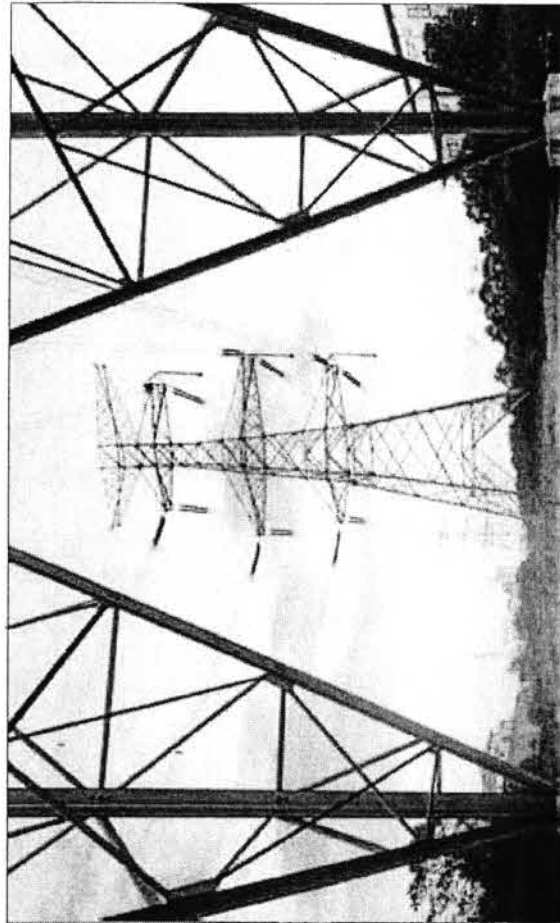
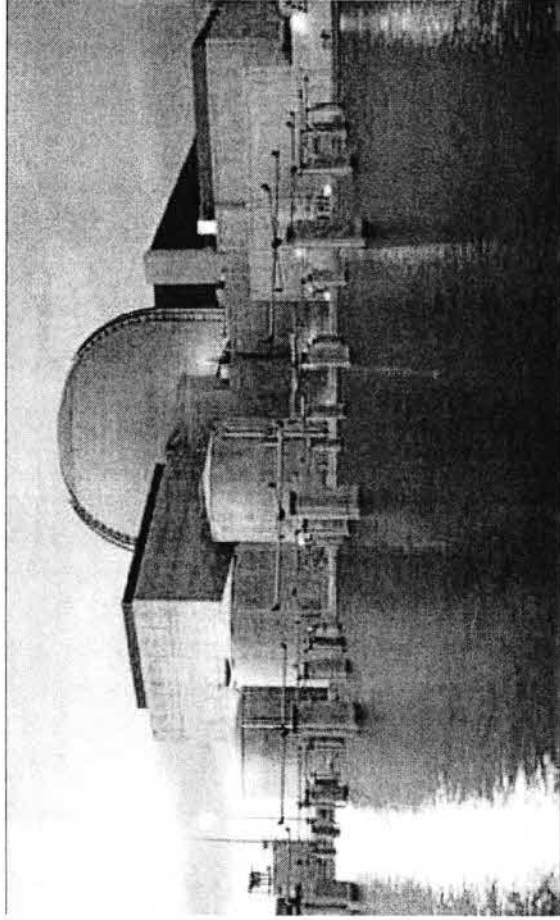
- Traditional grid built for one-way flow
- Technology advancements (storage, home energy management)
- Changing customer needs and demands
- Proliferation of distributed solar energy, which does not align with peak

The Modern Grid

- New technologies to enable two-way flow
- Proactive vs. reactive operations and maintenance
- Modern rate structure
- New ways to interact with customer
- Mobility for our field personnel
- Smarter, more flexible real-time system operations
- Support consumer products and services
- Addresses cybersecurity

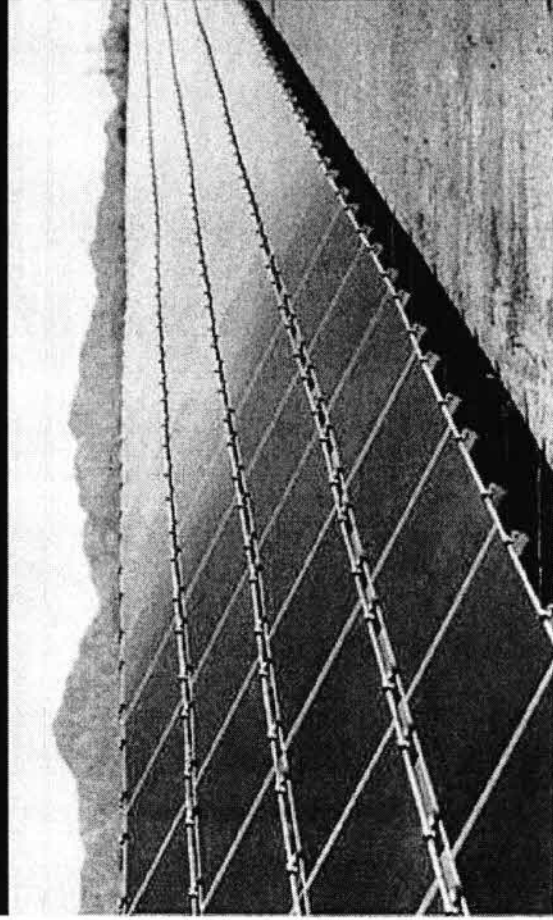
APS Laying Foundation for the Future

- Solar R&D initiatives
 - Solar Partner Program
 - Solar Innovation Study
- Smart meters fully deployed
- Investing in peaking capacity upgrades (Ocotillo)
- Evaluating storage/customer-cited technology
 - Battery pilot investments
 - Microgrids
- Software upgrades for distribution operations and customer service
- Ensuring our people have the relevant skill sets



PINNACLE WEST
CAPITAL CORPORATION

2016 APS RATE CASE



2016 APS RATE CASE APPLICATION

- Filed June 1, 2016
- Propose new rates go into effect on July 1, 2017
- Docket Number: E-01345A-16-0036
- Additional details, including filing, can be found at <http://www.azenergyfuture.com/rate-review/>

Procedural Schedule

Staff and Intervenor Direct Testimony (ex rate design)	December 28, 2016
Staff and Intervenor Direct Testimony (rate design)	January 27, 2017
APS Rebuttal Testimony	February 17, 2017
Staff and Intervenor Surrebuttal Testimony	March 10, 2017
Prehearing Conference	March 13, 2017
APS Rejoinder Testimony	March 17, 2017
Proposed Hearing Commencement Date	March 22, 2017

2016 RATE CASE KEY FINANCIALS

APS has requested a rate increase
to become effective July 1, 2017

Test year ended December 31, 2015

Total Rate Base - Adjusted

ACC Rate Base - Adjusted

\$8.01 Billion

Allowed Return on Equity

Capital Structure

Long-term debt

44.2%

Common equity

55.8%

Base Fuel Rate (¢/kWh)

2.9882

Post-test year plant period

18 months

Overview of Rate Increase (\$ in Millions)

Total stated base rate increase (inclusive of existing adjustor transfers)	\$ 433.4	15.00%
Less: Transfer to base rates of various adjustors already in effect	(267.5)	(9.26)
Net Customer Bill Impact	\$ 165.9	5.74%

2016 RATE CASE KEY FINANCIALS

APS has requested a rate increase
to become effective July 1, 2017

Overview of Rate Increase (\$ in Millions) – Key Components

Post-Test Year Plant Additions	\$ 98.1
Fair Value Increment	51.9
ROE Increase from 10.0% to 10.5%	29.3
Increase due to Changes in Depreciation Schedules	81.4
Decrease Fuel and Purchased Power over Base Rates	(61.7)
Decrease in Other Costs	(33.1)
Total Base Rate Increase	\$ 165.9

2016 RATE CASE SUMMARY

Focus on Clean Energy	Focus on Customers	Focus on Innovation	Focus on Sustainability
Ocotillo Modernization Project <ul style="list-style-type: none"> Requesting cost deferral order from in-service dates in 2018 and 2019 to effective date of rates in next rate case 	Residential Rate Design Modernization <ul style="list-style-type: none"> Transition to 3-part residential rate structure including a variable (energy kWh) charge, a fixed (basic service) charge, and a demand charge Modify net energy metering to differentiate compensation between energy consumed on site and exported energy 	Solar Partners Programs <ul style="list-style-type: none"> Installing 10 MW of APS-owned residential PV systems on 1,600 homes with advanced inverters, including 4 MW of battery storage 	Power Supply Adjustment <ul style="list-style-type: none"> Include environmental chemical costs, generation-related water costs, and energy storage products from 3rd party providers
Four Corners Selective Catalytic Reduction (SCR) Equipment <ul style="list-style-type: none"> Requesting cost deferral order from in-service dates to incorporation of the SCR costs in rates using a step-increase beginning in 2019 	General Service (Business) <ul style="list-style-type: none"> Retire AG-1; introduce aggregation discount for customers with multiple sites, a new rate for customers with extra high load factors and a economic development rate 	Red Rock Solar Generating Station <ul style="list-style-type: none"> 40 MW utility-scale solar facility (post-test year plant) 	Environmental Improvement Surcharge <ul style="list-style-type: none"> Increase from ~\$5M total cap to \$10M year-over-year cap
		Microgrid Projects <ul style="list-style-type: none"> Two microgrids in service by 4Q16; partnered with Marine Corps Air Station Yuma and Aligned Data Center in Phoenix 	Depreciation Rate Changes <ul style="list-style-type: none"> Change depreciation life schedules including Cholla Units 1 & 3, Ocotillo Units 1 & 2, Yucca Units 1-4 and AMI meters

RATE DESIGN MODERNIZATION

Rate design that better aligns pricing with cost to serve and leverages existing platform

Focus Area	Current State	Rate Case Objective
Time-of-Use Rates (TOU)	<ul style="list-style-type: none"> > 50% of residential customers are on a TOU rate On-peak hours from 12-7 PM (M-F) TOU difference in on-peak prices that are 4 times the off-peak prices 	<ul style="list-style-type: none"> Most residential customers on a TOU rate On-peak hours from 3-8 PM (M-F) to better align with system peak TOU difference in on-peak prices that are 2 times the off-peak prices
Demand Rates	<ul style="list-style-type: none"> 11% of residential customers are on demand rates, more than any other electric utility 	<ul style="list-style-type: none"> Most residential customers on demand rates Calculated on the highest demand averaged over a one-hour period during the on-peak period each month
Basic Service (Fixed) Charge	<ul style="list-style-type: none"> Customers pay basic service charge ranging from \$8.67 - \$16.91 per month 	<ul style="list-style-type: none"> Set basic service charge for all rate classes ranging from \$14 - \$24 per month
Net Metering	<ul style="list-style-type: none"> Excess power compensated at full retail price 	<ul style="list-style-type: none"> Excess power compensated at export price aligned with avoided cost Recovery of cost to purchase through existing PSA mechanism Grandfather qualified rooftop solar customers
Lost Fixed Cost Recovery (LFCR)	<ul style="list-style-type: none"> 1% year-over-year adjustment cap based on total revenues Recovers portion of costs reduced by energy efficiency (EE) and distributed generation (DG) programs 	<ul style="list-style-type: none"> Similar construct, but increase year-over-year adjustment cap to 2% based on total revenues Increased portion of lost fixed costs eligible for recovery

RATE DESIGN MODERNIZATION

Key residential rate proposals
designed to reduce cost shift
among customers

- Streamlined rate choices for residential customers including combinations of the following:

- Reduced kWh charges for variable portion (energy rate)
- Increased fixed charge component (basic service charge)
- Variations of new demand (kW) charge applied to on-peak hours
 - Measured using a customer's peak demand during on-peak hours (3-8 pm, Monday-Friday)
- Peak demand then multiplied by a demand rate
- Example:
 - 5kW demand during on-peak*
 - \$6.60/kW demand rate (R-1 rate plan)
 - 5kW x \$6.60 = \$33.00 demand charge

* Peak demand is calculated on the highest demand averaged over a one-hour period during the on-peak period each month.

Current
Customer Bill

Variable
Fixed

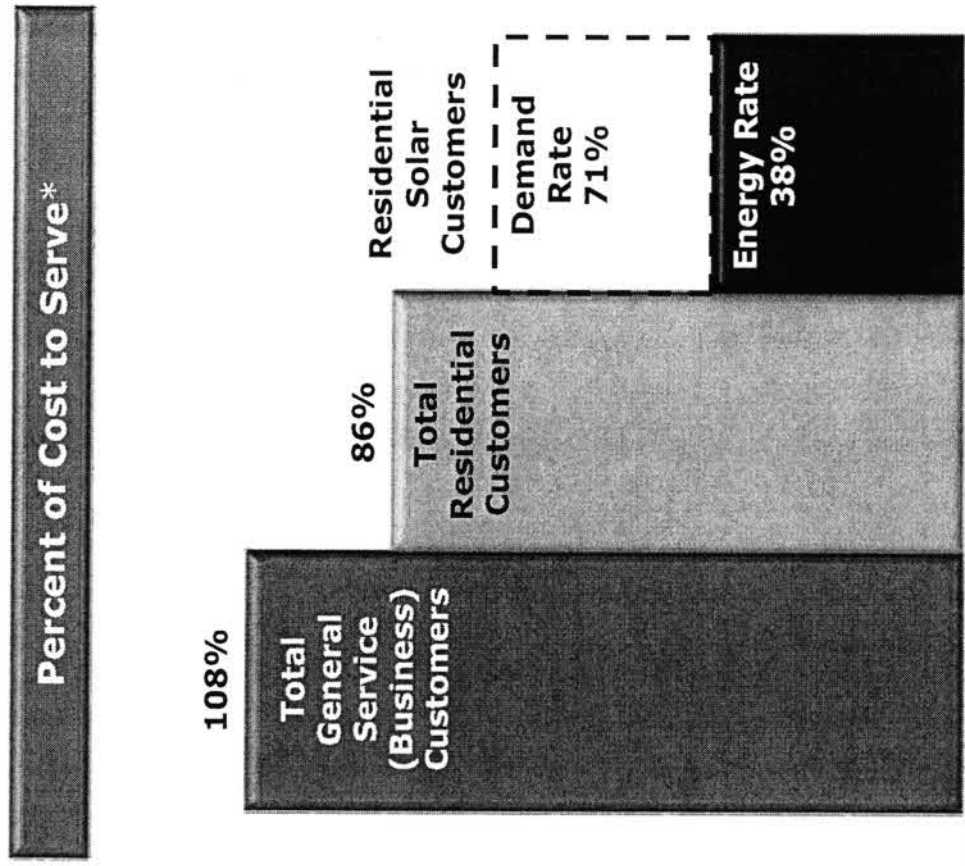
Proposed
Customer Bill

Variable (energy rate per kWh)
Demand (demand rate per kW)
Fixed (basic service charge)

APS COST OF SERVICE

Appropriate to place residential solar customers into a unique sub-category of customers

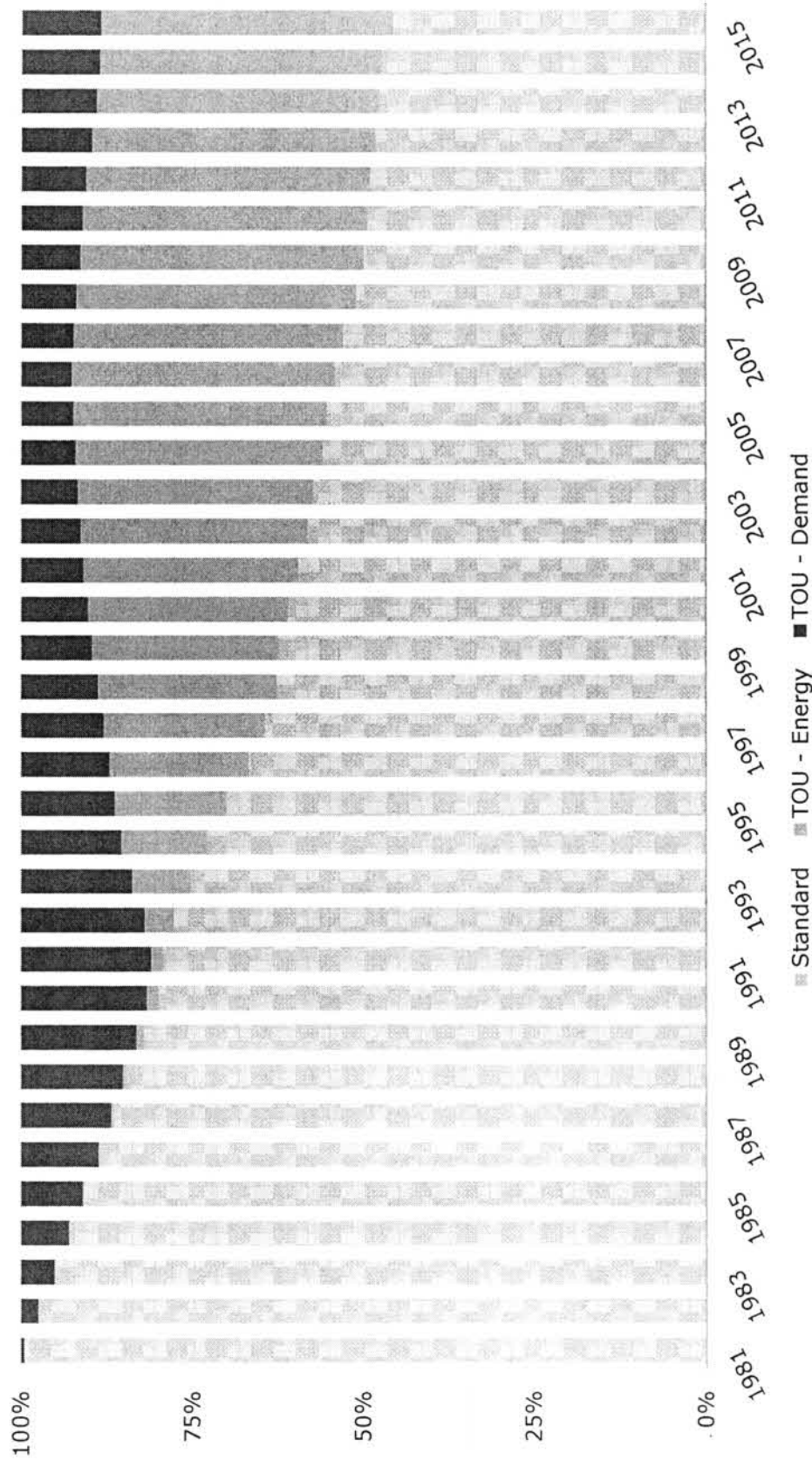
- Cost of service shows disparities in ratio of allocated costs to provide electric service, and what customer classes pay for the services received
- Solar customers on an energy-based rate avoid approximately \$72 per month based on proposed rates
- Current rate structure results in 96% of customers paying more than they should to subsidize rooftop solar
- APS is the first utility to conduct a full cost of service study considering solar customers as a separate class



* Test-year ended December 31, 2015 based on current rates

RATE DESIGN: A SOLID FOUNDATION TO BUILD ON

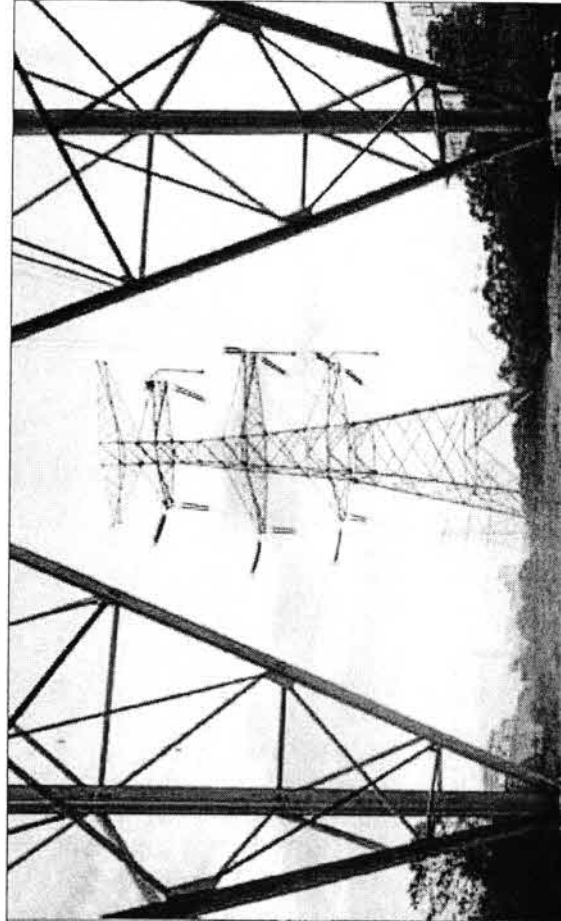
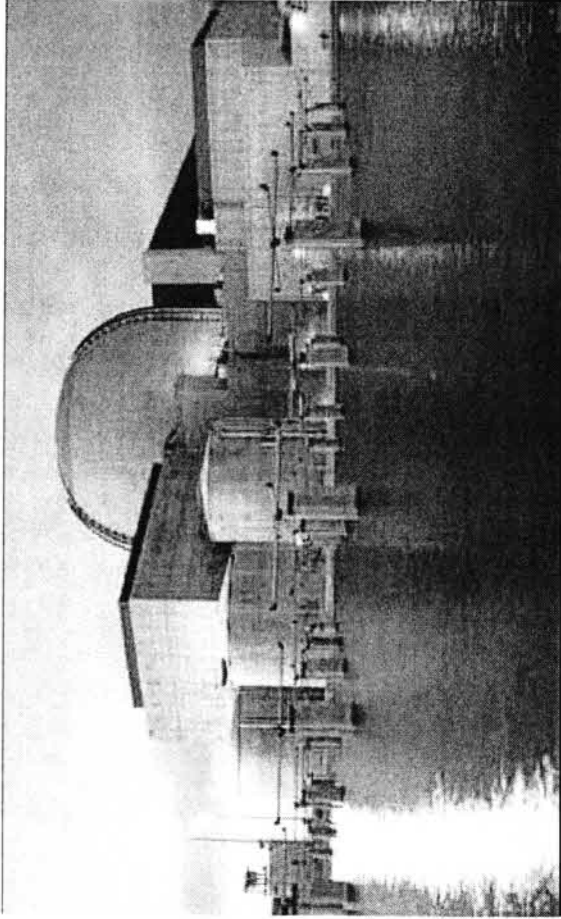
Over 50% of APS residential customers are already on time-of-use rates, including 11% on demand rates



OCOTILLO MODERNIZATION PROJECT AND FOUR CORNERS SCRS

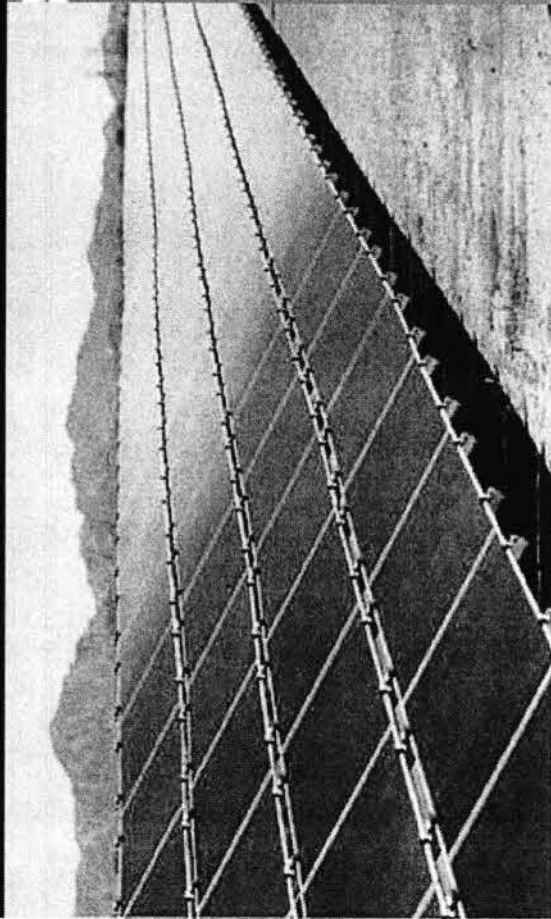
- Included in the 2016 rate case application, APS is requesting Accounting Deferral Orders for two large generation-related capital investments
 - Ocotillo Modernization Project: Retiring two aging, steam-based, natural gas units, and replacing with 5 new, fast-ramping, combustion turbine units
 - Four Corners Power Plant: Installing Selective Catalytic Reduction (SCR) equipment to comply with Federal environmental standards

	Ocotillo Modernization Project	Four Corners SCRs
In-Service Dates	Units 6, 7 – Fall 2018 Units 3, 4 and 5 – Spring 2019	Unit 5 – Late 2017 Unit 4 – Spring 2018
Total Cost (APS)	\$500 million	\$400 million
Estimated Cost Deferral	\$45 million (through 2019)	\$30 million (through 2018)
Rate Request	Requesting cost deferral from date of commercial operation to the effective date of rates in next rate case	Requesting cost deferral order from time of installation to incorporation of the SCR costs in rates using a step increase beginning in 2019



PINNACLE WEST CAPITAL CORPORATION

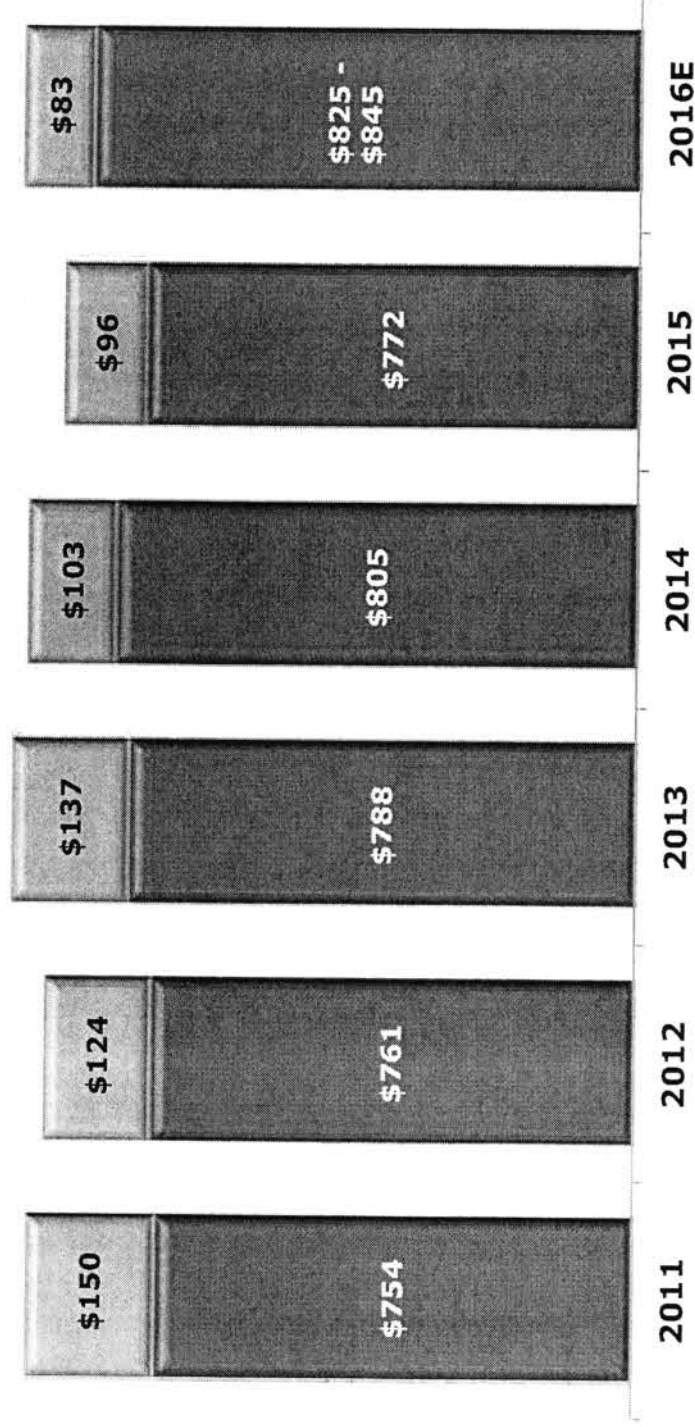
APPENDIX



OPERATIONS & MAINTENANCE OUTLOOK

Goal is to keep O&M per kWh flat, adjusted for planned outages

(\$ Millions)



■ PNW Consolidated ■ RES/DSM*

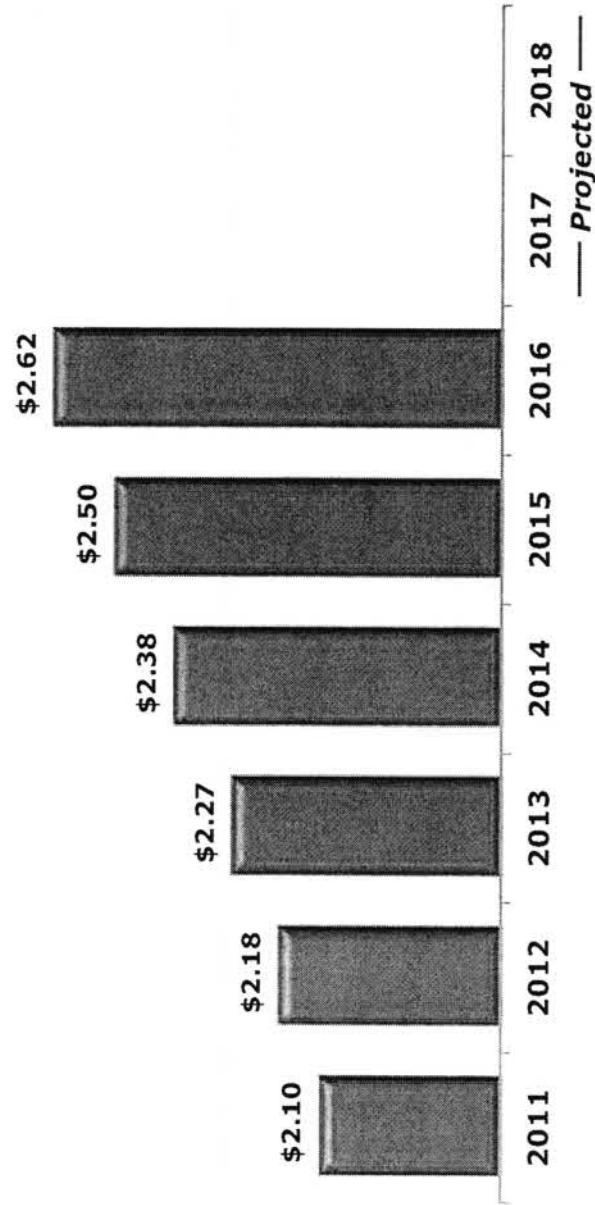
*Renewable energy and demand side management expenses are offset by adjustment mechanisms.

DIVIDEND GROWTH

Pinnacle West's indicated annual dividend is \$2.62 per share; targeting ~5% annual dividend growth

Dividend Growth Goal

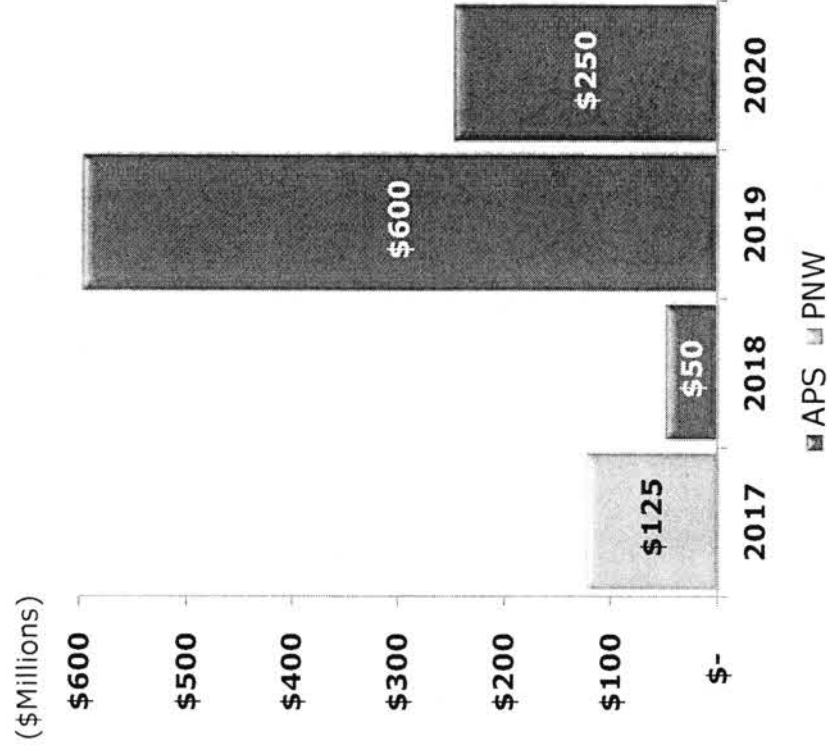
Indicated Annual Dividend Rate at Year-End



Future dividends subject to declaration at Board of Directors' discretion.

BALANCE SHEET STRENGTH

Debt Maturity Schedule



Credit Ratings

- A- rating or better at S&P, Moody's and Fitch

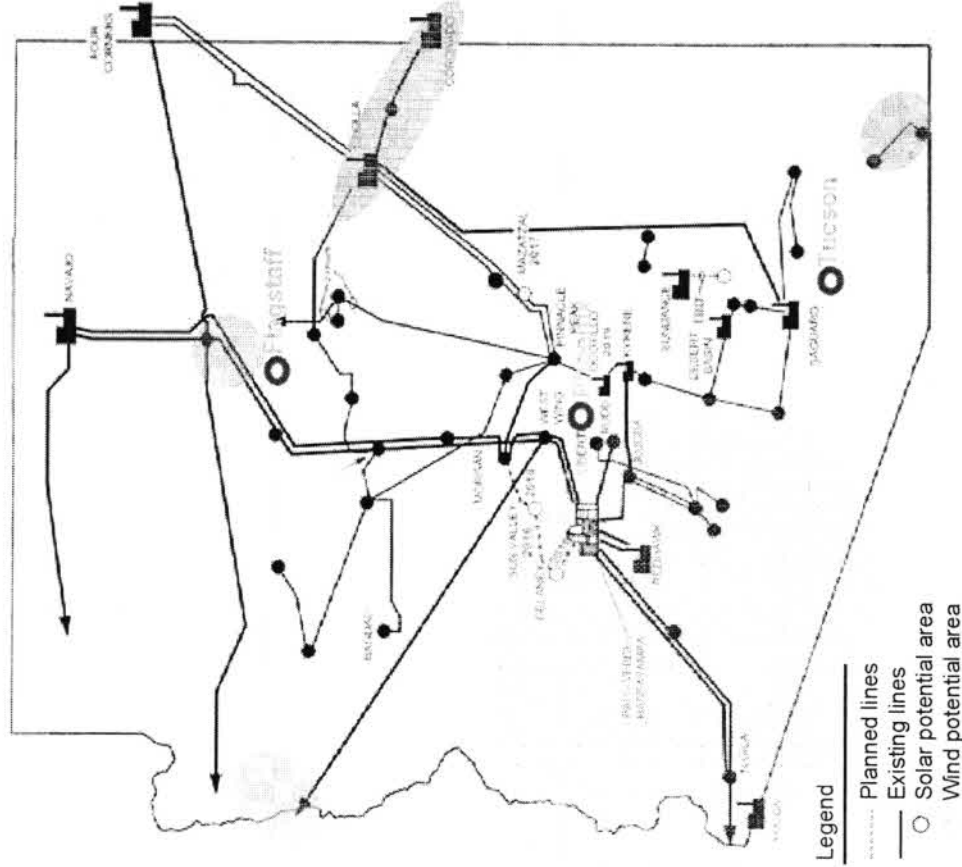
2016 Major Financing Activities

- \$100 million 3-year term loan closed April 2016
- \$350 million 30-year 3.75% APS senior unsecured notes issued May 2016
- \$250 million 10-year 2.55% APS senior unsecured notes issued September 2016

We are disclosing credit ratings to enhance understanding of our sources of liquidity and the effects of our ratings on our costs of funds.

APS TRANSMISSION

Strategic transmission investment is essential to maintain reliability and deliver diversified resources to customers



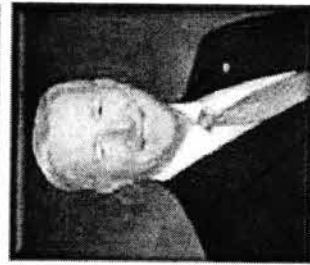
- 10-Year Transmission Plan filed January 2016 (115 kV and above)
 - 110 miles of new lines
- Also includes:
 - Delaney-Palo Verde 500kV (2016)
 - Delaney-Sun Valley 500kV (2016)
 - Sun Valley-Trilby Wash 230kV (2016)
 - Morgan-Sun Valley 500kV (2018)
 - North Gila-Orchard 230kV (2021)
- Projects to deliver renewable energy approved by ACC
- Transmission investment diversifies regulatory risk
 - Constructive regulatory treatment
 - FERC formula rates and retail adjustor

ARIZONA CORPORATION COMMISSION

Terms to January 2019

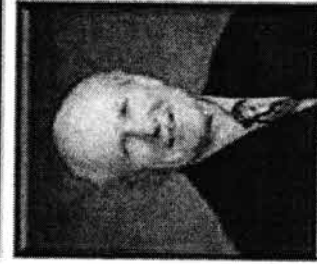


**Tom
Forese (R)**
Chairman

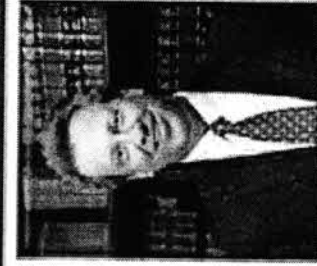


**Doug
Little (R)**

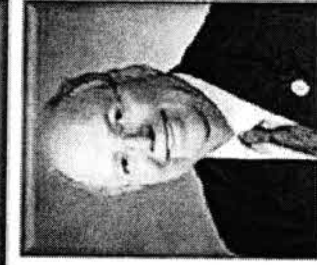
Terms to January 2020



**Bob
Burns (R)***



**Boyd
Dunn (R)**



**Andy
Tobin (R)**

Other State Officials

ACC Executive Director – Ted Vogt
RUCO Director – David Tenney

* Term limited - elected to four-year terms (limited to two consecutive)

2017 KEY DATES

ACC Key Dates / Docket #	Q1	Q2	Q3	Q4
Key Recurring Regulatory Filings				
Lost Fixed Cost Recovery E-01345A-11-0224	Jan 15			
Transmission Cost Adjustor E-01345A-11-0224		May 15		
2018 DSM/EE Implementation Plan		Jun 1		
2018 RES Implementation Plan for Reset of Renewable Energy Adjustor			Jul 1	
APS Rate Case E-01345A-16-0036			See Slide 9	
Resource Planning and Procurement E-00000V-15-0094		April 3: Final IRP due		
Reducing System Peak Demand Costs E-00000J-16-0257			TBD	
Review, Modernization and Expansion of Arizona Renewable Energy Standards E-00000Q-16-0289			TBD	
ACC Open Meetings				
ACC Open Meetings Held Monthly				
Other Key Dates				
Arizona State Legislature	Q1	Q2	Q3	Q4
	In session Jan 9 – End of Q2			

ARIZONA ELECTRIC UTILITIES GENERAL RATE CASES

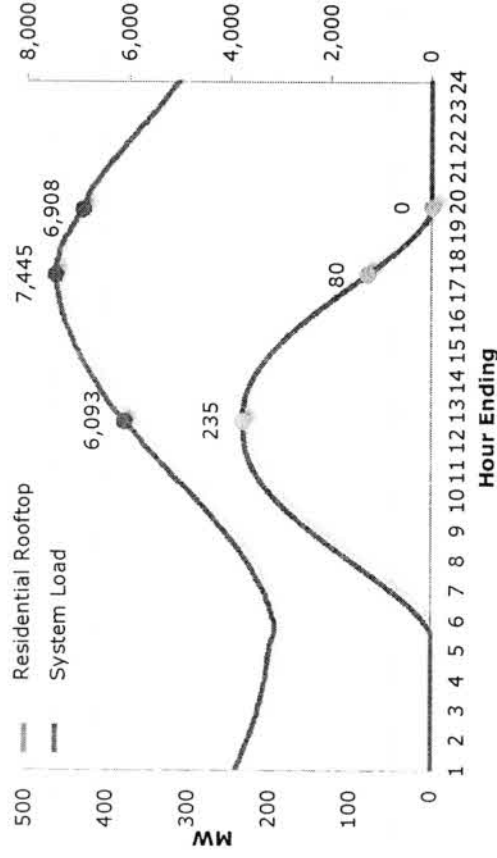
<p>UNS Electric (93,000 customers) Docket # E-04204A-15-0142</p> <p>Application Filed May 5, 2015 Hearing (Mar 1 – 24, 2016) Decision in Phase One (Decision No. 75697, Aug 18, 2016) UNSE Customer Education Plan on Rates – Filed Sep 30, 2016 Phase Two (Net Metering Issues) Testimony – Expected Apr 2017 Phase Two Hearing (if necessary) – Expected May 2017 Phase Two Decision – Expected Jul 2017</p>	<p>Tucson Electric Power Company (415,000 customers) Docket # E-01933A-15-0322</p> <p>Application Filed Nov 5, 2015 Non-unanimous Revenue Requirement Settlement Filed (Aug 15, 2016) Hearing (Sep 8 – 20, 2016) Phase One Decision – Expected Feb 2017 Phase Two (Net Metering Issues) Testimony – Expected Jun 2017 Phase Two Hearing – To Be Scheduled</p>
<p>Sulphur Springs Valley Electric Cooperative (58,000 customers) Docket # E-01575A-15-0312</p> <p>Application Filed Aug 31, 2015 Hearing (May 17 – 27, 2016) Decision in Phase One (Decision No. 75788, Nov 11, 2016) Phase Two (Net Metering Issues) Testimony – Expected May 2017 Phase Two Hearing – Expected Jun 2017 Phase Two Decision – Expected Aug 2017</p>	<p>Trico Electric Cooperative (38,000 customers) Docket # E-01461A-15-0363</p> <p>Application Filed Oct 23, 2015 Non-unanimous Revenue Requirement Settlement (Jul 8, 2016) Hearing (Aug 17, 2016) Decision Expected Feb 2017</p>

RESIDENTIAL VS. UTILITY-SCALE SOLAR

Performance at system peak

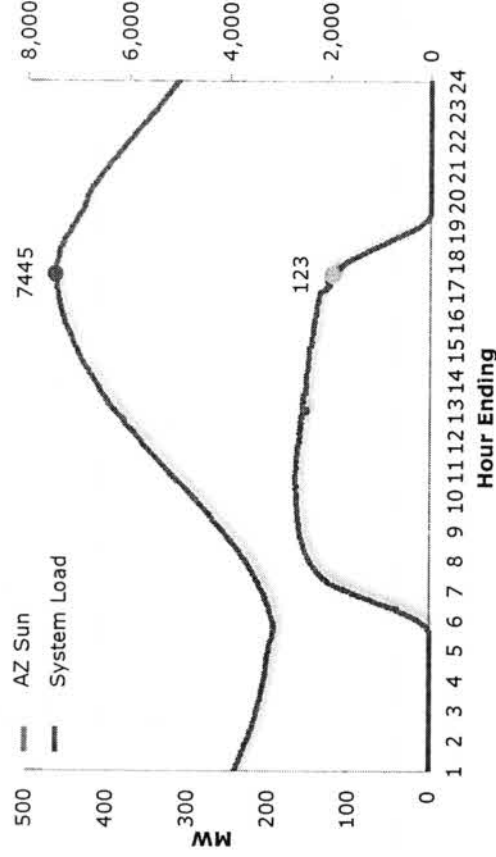
On June 19th, APS customers hit "peak demand" for 2016 using more than 7,400 MW of electricity

Residential Rooftop Solar



- Noon: Customer demand still increasing; rooftop solar peaks and begins to decline
- 5:30PM: Customer demand peaks; rooftop solar producing at 28% of total capacity
- 7:30PM: Rooftop output at zero, but demand still above 6,900 MW of power

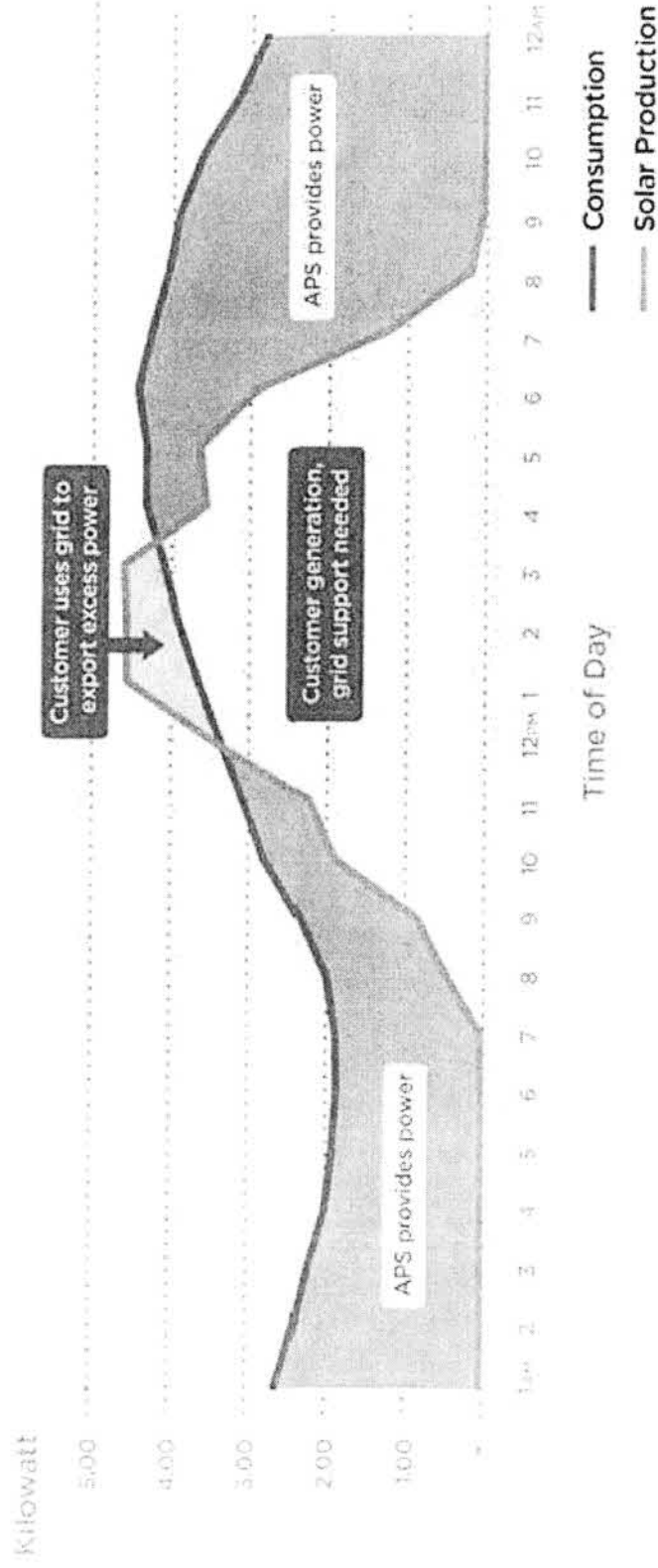
AZ Sun Utility-Scale Solar



- Solar panels at 8 of the AZ Sun plants rotate to track the sun, achieving highest production earlier in the day and maintaining it later
- At peak demand, utility-scale solar producing at 72% of total capacity

ROOFTOP SOLAR CUSTOMERS USE THE GRID 24 HOURS PER DAY

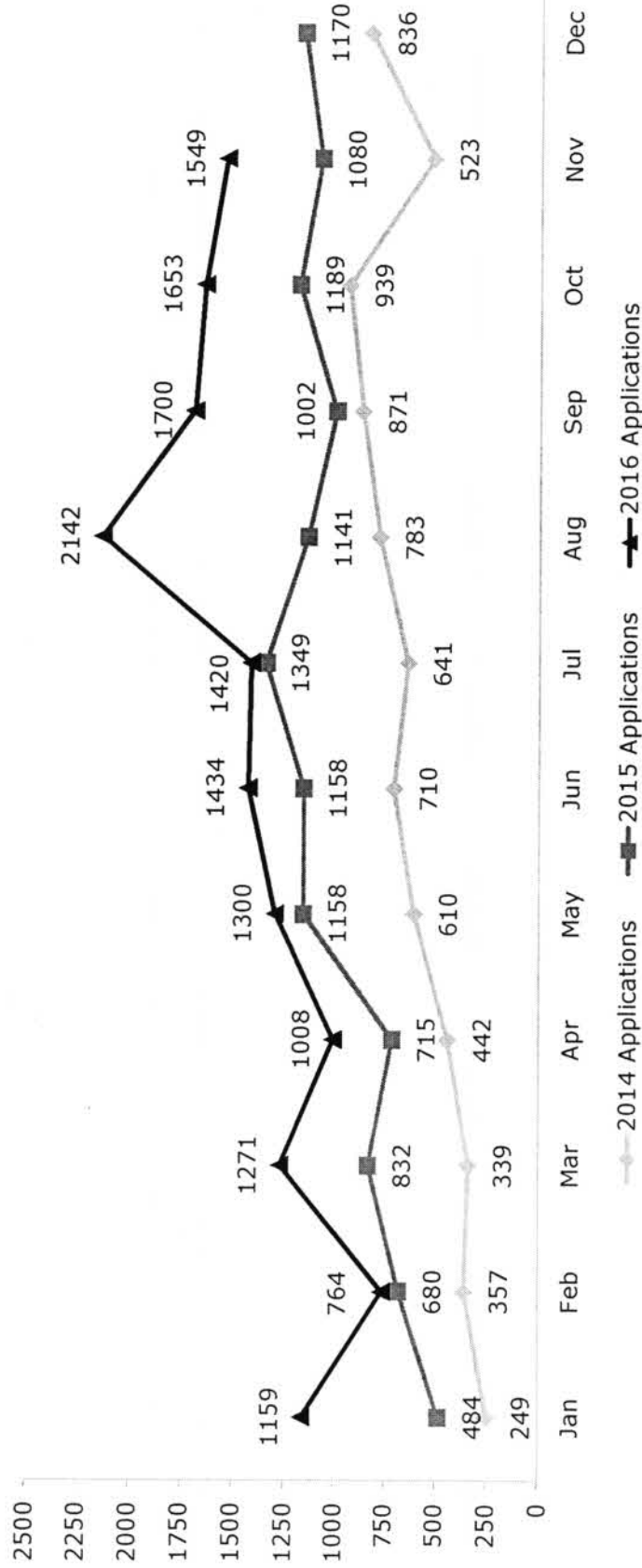
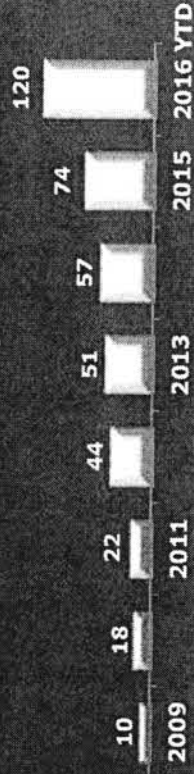
TYPICAL GRID INTERACTION FOR ROOFTOP SOLAR



- Customers with rooftop solar systems **do not pay for all of the electric services they use**
- These **unpaid costs are then paid by other customers** (through higher rates) that can't have or don't want solar
- This issue will only get **bigger over time**

RESIDENTIAL PV APPLICATIONS*

Residential DG (MWdc) Annual Additions



* Monthly data equals applications received minus cancelled applications. As of November 30, 2016 over 51,000 residential grid-tied solar photovoltaic (PV) systems have been installed in APS's service territory, totaling 400 MWdc of installed capacity. Excludes APS Solar Partner Program residential PV systems.

Note: www.arizonasolar.org logs total residential application volume, including cancellations. Solar water heaters can also be found on the site, but are not included in the chart above.

ENVIRONMENTAL PLAN

Regional Haze compliance is the biggest driver of environmental spend over the next few years

EPA Ruling	Regional Haze / BART (SCR)	Mercury and Other Hazardous Air Pollutants (ACI + Baghouse)	Coal Combustion Residuals	Cooling Water Intake Structures – CWA 316(b)
	Announced in 1999, with site-specific requirements announced more recently	MATS compliance by April 2015, with potential for one-year extension	Announced on December 19, 2014 (Subtitle D)	Announced in May 2014

Four Corners Units 4 & 5

Approximately \$400M for SCRs in 2016-2018 (does not include CAPEX related to 4CA 7% interest)

Immaterial

Cholla Unit 3

On September 11, 2014, APS announced a proposal to close Unit 2 by April 2016 and stop burning coal at the other APS-owned units (1 and 3) by the mid-2020's. If EPA does not approve the plan, SCR for Unit 3 would cost approximately \$100 million.

APS estimates that its share of incremental costs to comply with the CCR rule for Four Corners is approximately \$15 million, and its share of incremental costs for Cholla is in the range of \$5 million to \$40 million. APS expects to incur certain of these costs during 2016-2018 timeframe.

\$0

Navajo Plant Units 1-3

Up to ~\$200M for SCRs and baghouses
On July 28, 2014, EPA issued the final BART rule incorporating the better-than-BART alternative proposed by SRP and others

Approximately \$1 million

To be determined

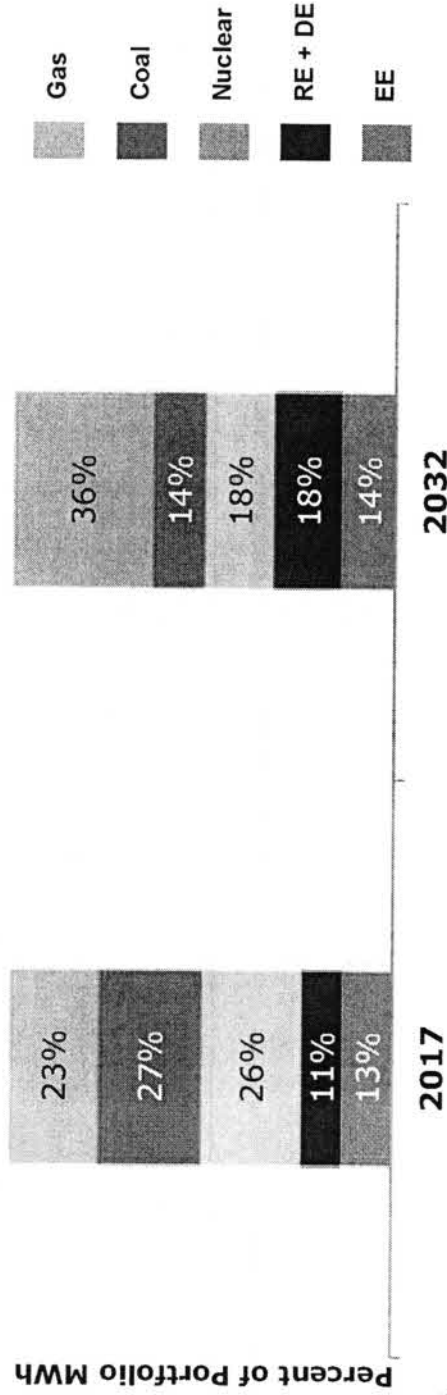
Clean Power Plan: On August 3, 2015, the U.S. EPA issued its final rules to reduce carbon dioxide emissions from fossil fuel-fired power plants including those on Tribal lands. APS is reviewing the rules, while working closely with other utilities, the Arizona Department of Environmental Quality, the ACC, tribal officials and other impacted stakeholders to determine how best to proceed. On February 9, 2016, the U.S. Supreme Court granted a stay of the Clean Power Plan pending judicial review, which temporarily delays compliance obligations.

Note: Dollars shown at ownership. Estimates as of September 30, 2016.

- Cholla: Unit 1 is not BART-eligible; Unit 2 retired on October 1, 2015; Unit 4 is owned by PacifiCorp.
- SO₂ NAAQS and greenhouse gas-related costs will be determined based upon EPA rule makings, with no spend occurring before 2016.
- ACI = Activated Carbon Injection; NAAQS = National Ambient Air Quality Standard; SCR = Selective Catalytic Reduction control technology

COAL FLEET STRATEGY

APS's proactive approach to reducing emissions leads to coal's expected share of the energy mix being reduced to 14%



Emissions

- 820 MW of coal has been retired including 560 MW at Four Corners Units 1-3 in 2013 and 260 MW at Cholla Unit 2 as of October 1, 2015.
- Four Corners:** 2013 transaction to purchase Southern California Edison's ownership in Units 4 and 5 and closure of units 1, 2 & 3 leads to expected reductions of emissions; particulates are expected to decline by 43%, NOx by 36%, CO2 by 30%, mercury by 61% and SO2 by 24%.
- Cholla Power Plant:** Closure of Unit 2 as of October 1, 2015 will reduce mercury emissions by 51%, particulates by 34%, NOx by 32%, and CO2 and SO2 by 23% each. We also announced plans to work with the U.S. EPA to stop burning coal at our remaining Cholla units by the mid-2020s
- Navajo Generating Station:** Plan proposed by a group of stakeholders, including SRP, the operating agent, was approved by the EPA in 2014. The plan will achieve even greater NOx emission reductions than the EPA's proposal
- Participated in Carbon Disclosure Project since 2006

Note: RE = Renewable Energy; DE = Distributed Energy; EE = Energy Efficiency
Data shown is based on the Updated 2017 Preliminary Integrated Resource Plan filed September 30, 2016.

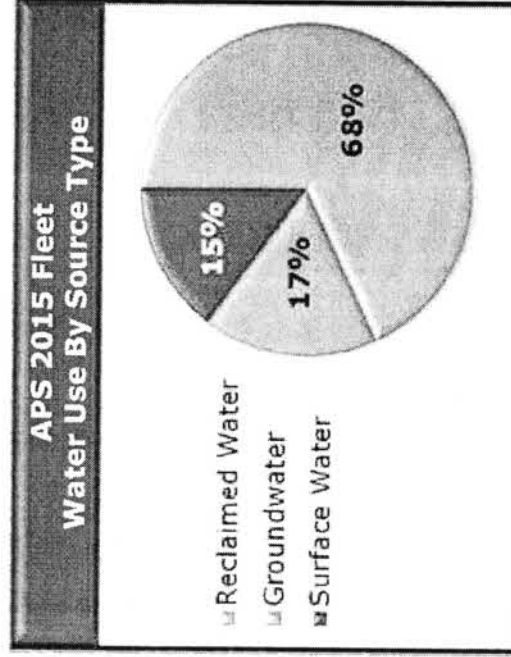
WATER STRATEGY

APS, and Palo Verde in particular, has provided national and international leadership on the use of reclaimed water for power generation

Vision: APS continues to strive for sustainable and cost-effective water supplies for energy production for APS customers.

Mission: To execute a strategic water resource management program that provides APS timely and reliable information to manage our water resources portfolio efficiently and effectively, and helps ensure long-term water supplies and water contingency plans for each of our facilities, even in times of extended drought.

- Each APS power plant has a unique water strategy, developed to promote efficient and sustainable use of water.



- Water Usage and Intensity:** Goal is to maximize use of renewable water resources and minimize use of non-renewable resources. Our 2016 initiatives include:
- Reducing consumption of non-renewable water resources by 8% over 2014 levels, and
 - Reducing water intensity company-wide by 20 percent over 2014 levels

Palo Verde Nuclear Generating Station: The only nuclear plant in the world that does not sit on a large body of water. Instead, it uses treated effluent, or wastewater, from several area municipalities, recycling approximately 20 billion gallons of wastewater each year

GENERATION PORTFOLIO*

	Plant	Location	No. of Units	Dispatch	COD	Ownership Interest ¹	Net Capacity (MW)
NUCLEAR 1,146 MW	Palo Verde	Wintersburg, AZ	3	Base	1986-1989	29.1%	1,146
COAL 1,672 MW	Cholla	Joseph City, AZ	2	Base	1962-1980	100	387
	Four Corners	Farmington, NM	2	Base	1969-1970	63	970
	Navajo	Page, AZ	3	Base	1974-1976	14	315
GAS - COMBINED CYCLE 1,871 MW	Redhawk	Arlington, AZ	2	Intermediate	2002	100	984
	West Phoenix	Phoenix, AZ	5	Intermediate	1976-2003	100	887
GAS - STEAM TURBINE 220 MW	Ocotillo	Tempe, AZ	2	Peaking	1960	100	220
GAS / OIL COMBUSTION TURBINE 1,088 MW	Sundance	Casa Grande, AZ	10	Peaking	2002	100	420
	Yucca	Yuma, AZ	6	Peaking	1971-2008	100	243
	Saguaro	Red Rock, AZ	3	Peaking	1972-2002	100	189
	West Phoenix	Phoenix, AZ	2	Peaking	1972-1973	100	110
	Ocotillo	Tempe, AZ	2	Peaking	1972-1973	100	110
	Douglas	Douglas, AZ	1	Peaking	1972	100	16
	Hyder & Hyder II	Hyder, AZ	-	As Available	2011-2013	100	30
	Paloma	Gila Bend, AZ	-	As Available	2011	100	17
	Cotton Center	Gila Bend, AZ	-	As Available	2011	100	17
	Chino Valley	Chino Valley, AZ	-	As Available	2012	100	19
SOLAR 189 MW	Foothills	Yuma, AZ	-	As Available	2013	100	35
	Distributed Energy	Multiple AZ Facilities	-	As Available	Various	100	15
	Gila Bend	Gila Bend, AZ	-	As Available	2015	100	32
	Luke Air Force Base	Glendale, AZ	-	As Available	2015	100	10
	Desert Star	Buckeye, AZ	-	As Available	2015	100	10
	Various	Multiple AZ Facilities	-	As Available	1996-2006	100	4
Total Generation Capacity							6,186 MW

* As disclosed in 2015 Form 10-K. ¹ Includes leased generation plants

PURCHASED POWER CONTRACTS*

	Contract	Location	Owner/Developer	Status ¹	PPA Signed	COD	Term (Years)	Net Capacity (MW)
SOLAR 310 MW	Solana	Gila Bend, AZ	Abengoa	IO	Feb-2008	2013	30	250
	RE Ajo	Ajo, AZ	Duke Energy Gen Svcs	IO	Jan-2010	2011	25	5
	Sun E AZ 1	Prescott, AZ	SunEdison	IO	Feb-2010	2011	30	10
	Saddle Mountain	Tonopah, AZ	SunEdison	IO	Jan - 2011	2012	30	15
	Badger	Tonopah, AZ	PSEG	IO	Jan-2012	2013	30	15
	Gillespie	Maricopa County, AZ	Recurrent Energy	IO	Jan-2012	2013	30	15
WIND 289 MW	Aragonne Mesa	Santa Rosa, NM	Ingilfen Asset Mgmt	IO	Dec-2005	2006	20	90
	High Lonesome	Mountainair, NM	Foresight / EME	IO	Feb-2008	2009	30	100
	Perrin Ranch Wind	Williams, AZ	NextEra Energy	IO	Jul-2010	2012	25	99
	Salton Sea	Imperial County, CA	Cal Energy	IO	Jan-2006	2006	23	10
BIOMASS 14 MW	Snowflake	Snowflake, AZ	Novo Power	IO	Sep-2005	2008	15	14
BIOGAS 6 MW	Glendale Landfill	Glendale, AZ	Glendale Energy LLC	IO	Jul-2008	2010	20	3
	NW Regional Landfill	Surprise, AZ	Waste Management	IO	Dec-2010	2012	20	3
INTER-UTILITY 540 MW	PacificCorp Seasonal Power Exchange	-	PacificCorp	IO	Sep-1990	1991	30	480
	Not Disclosed	Not Disclosed	Not Disclosed	IO	May-2009	2010	10	60
HEAT RATE OPTIONS 150 MW	Call Option	-	Not Disclosed	IO	Oct-2005	2007	10	150
CONVENTIONAL TOLLING 1,074 MW	CC Tolling	Not Disclosed	Not Disclosed	IO	Mar-2006	2007	10	514
	CC Tolling	Not Disclosed	Not Disclosed	IO	Aug-2007	2010	10	560
DEMAND RESPONSE 25 MW	Demand Response	Not Disclosed	Not Disclosed	IO	Sep-2008	2010	15	25
Total Contracted Capacity								2,418 MW

* As disclosed in 2015 Form 10-K. ¹ UD = Under Development; UC = Under Construction; IO = In Operation

INVESTOR RELATIONS CONTACTS

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Phoenix, Arizona 85072-3999

Visit us online at: www.pinnaclewest.com

EXHIBIT H

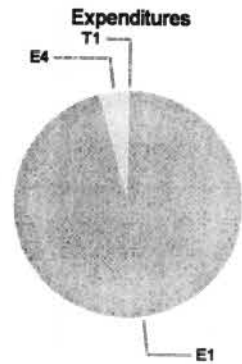
Filer Name: Forese For Arizona	More >>	Status: Terminated	Last Reported: 9/27/2015
Candidate Name: Forese, Tom III	Office Sought: Corporation Commissioner	Party: Republican	Year: 2014

Income for period 11/27/2012 to 11/24/2014	Amount
Personal and Family Contributions (C1)	\$0.00
Individual Contributions (C2)	\$15,460.00
Contributions from Political Committees (C3)	\$0.00
Business Contributions (C4)	\$0.00
Small Contributions (C5)	\$0.00
CCEC Funding (C6)	\$243,950.00
Qualifying Contributions (C7)	\$10,135.00
Loans Made to this Committee (L1)	\$0.00
Other Receipts Incl. Interest & Dividends (R1)	\$0.00
Transfers from Other Committees (T1)	\$0.00
Cash Surplus from Previous Committee (S1)	\$0.00
Total Income	\$269,550.00



■ Individual Contributions (C2) ■ CCEC Funding (C6) ■ Qualifying Contributions (C7)

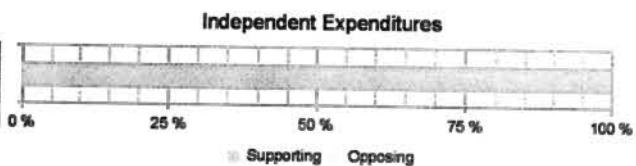
Expenditures for period 11/27/2012 to 11/24/2014	Amount
Operating Expenses (E1)	\$257,897.86
Independent Expenditures (E2)	\$0.00
Contributions to Other Committees (E3)	\$0.00
Other Expenses (E4)	\$11,342.14
Transfers to other Committees (T1)	\$310.00
Loans Made by This Committee (L2)	\$0.00
Expenditure of In-Kind Contributions (C8)	\$0.00
Disposal of Surplus Cash (S1)	\$0.00
Total Expenditures	\$269,550.00
Bill Payments for Previous Expenditures (D1)	\$0.00
Total Disbursed	\$269,550.00



■ Operating Expenses (E1) ■ Other Expenses (E4)
■ Transfers to other Committees (T1)

Cash Balance as of 11/24/2014	\$0.00
-------------------------------	--------

Independent Expenditures for to	Amount
Supporting Candidate	\$492,637.00
Opposing Candidate	\$0.00



[Reports Filed](#)

[2016 Summary >>](#)

EXHIBIT I

Filer Name: Doug Little for Arizona Corporation Commission	More >>	Status: Terminated	Last Reported: 9/27/2015
Candidate Name: Little, Douglas B	Office Sought: Corporation Commissioner	Party: Republican	Year: 2014

Income for period 11/27/2012 to 11/24/2014	Amount
Personal and Family Contributions (C1)	\$1,340.00
Individual Contributions (C2)	\$15,890.00
Contributions from Political Committees (C3)	\$0.00
Business Contributions (C4)	\$0.00
Small Contributions (C5)	\$0.00
CCEC Funding (C6)	\$243,073.32
Qualifying Contributions (C7)	\$0.00
Loans Made to this Committee (L1)	\$0.00
Other Receipts Incl. Interest & Dividends (R1)	\$0.00
Transfers from Other Committees (T1)	\$310.00
Cash Surplus from Previous Committee (S1)	\$0.00
Total Income	\$260,573.32



■ Personal and Family Contributions (C1) ■ Individual Contributions (C2)
■ CCEC Funding (C6) ■ Transfers from Other Committees (T1)

Expenditures for period 11/27/2012 to 11/24/2014	Amount
Operating Expenses (E1)	\$260,573.32
Independent Expenditures (E2)	\$0.00
Contributions to Other Committees (E3)	\$0.00
Other Expenses (E4)	\$0.00
Transfers to other Committees (T1)	\$0.00
Loans Made by This Committee (L2)	\$0.00
Expenditure of In-Kind Contributions (C8)	\$0.00
Disposal of Surplus Cash (S1)	\$0.00
Total Expenditures	\$260,573.32
Bill Payments for Previous Expenditures (D1)	\$0.00
Total Disbursed	\$260,573.32

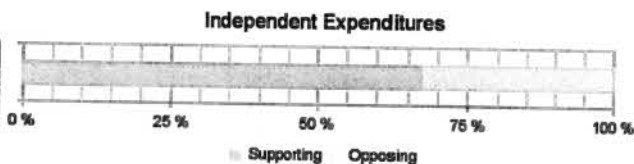
Expenditures



■ Operating Expenses (E1)

Cash Balance as of 11/24/2014	\$0.00
-------------------------------	--------

Independent Expenditures for to	Amount
Supporting Candidate	\$494,138.00
Opposing Candidate	\$241,025.00



[Reports Filed](#)

[2016 Summary >>](#)

EXHIBIT J

KNXV

WEATHER TRAFFIC²⁸ ALL SECTIONS

92

Motion filed to stop Commissioners from ruling in APS solar case; accusations of bias

BY: Lauren Gilger**POSTED:** 3:48 PM, Sep 17, 2015**UPDATED:** 10:10 AM, Oct 9, 2015**TAG:** state

Share Article

UPDATE 10/7/15 --

The Corporation Commission has rejected the claims of bias made in this complaint.

The Commission let the 20-day time limit expire, so the filings are considered denied.

Commissioners Tom Forese, Doug Little and Bob Stump said in a filing that they were unbiased in all aspects of the August hearing in which the Commission allowed APS to move forward with their request to raise rates for rooftop solar customers.

Forese wrote, "After a thorough review of the record, and having fully considered these matters, I have determined that there are no grounds for disqualification or recusal that would prevent me from participating in this decision."

APS dropped its request to raise rates before its next rate case hearing, though, after these allegations were made.

Commission Chairman Susan Bitter Smith said the Commission may take up APS's request to drop the issue at its October 20 Open Meeting.

Two former Arizona Corporation Commissioners have filed a motion with the Commission, seeking to disqualify Commissioners Tom Forese and Doug Little from the decision-making

process in Arizona Public Service's solar net metering case, accusing them of being biased because they allegedly benefitted from "massive donations" from Arizona Public Service (APS) during their 2014 campaigns.

Bill Mundell and Renz Jennings, a Republican and a Democrat respectively, filed the motion with the ACC on Thursday, along with solar company SunRun, Inc.

SunRun also filed a separate motion to recuse Commissioner Bob Stump, as well, citing allegations that he "repeatedly indicated pre-judgment of issues before him involving rooftop solar," according to a press release.

The motion against Forese and Little, filed by attorney and former Tempe Mayor Hugh Hallman, accuses them of benefitting from millions in dark money spent in the 2014 election.

Dark money groups spent about \$3.2 million in ads for Little and Forese and in attack ads against their opponents. It's widely believed that the money was supplied by APS or its parent company, Pinnacle West.

APS has not responded to claims that it was behind the campaign donations to the two candidates, but has defended its right to be involved in the political process.

Barbara Lockwood, General Manager of Regulator Affairs and Compliance for APS, said in a statement that this is part of a larger tactic by some rooftop solar companies to delay Commission actions so rooftop solar companies can continue making profits now.

"This latest ploy by SolarCity and Sunrun doesn't surprise us at all – it is more of the same to try to divert attention from serious policy discussion and decisions about issues critical to the energy future of Arizona," she said in the statement. "It's not just happening in Arizona, it's the "playbook" these companies are deploying across the country, from Florida to Wisconsin to Nevada."

Last month, the ACC allowed APS to continue with their net metering case, after the company requested to raise fees on rooftop solar customers.

Solar interests came out in force to object to the request, calling it an unfair attack on the solar industry.

The ACC is an elected five-member commission that regulates water, gas, power and other companies that hold monopolies in the state, including APS.

On a conference call about the motion Thursday, former Commissioners Jennings and Mundell said they were concerned about the dignity and integrity of the Commission.

They said public perception is clear that APS was behind the dark money in the 2014 election, and that the public has a right to know if the decision-makers on the ACC are “fair-minded and unbiased.”

“There’s something quite distressing about the idea of a utility picking its own regulators,” Jennings said.

The two former Commissioners also said they are concerned about disclosure.

Hallman said the former Arizona Supreme Court Justice Thomas Zlacket issued an opinion that the Arizona Constitution clearly permits the ACC to force APS to disclose its political spending.

A spokesperson for the ACC said because this is a pending matter before the Commission, it would not be appropriate for them to comment at this time.

Forese’s office didn’t immediately return calls and Little’s office said he was not commenting at this time.

This is the latest in a series of issues that have embroiled the ACC in controversy.

Commissioner Bob Stump is under investigation by the Arizona Attorney General because of accusations that he exchanged text messages with APS executives during the 2014 campaign.

And, earlier this month, another attorney filed a complaint with the Attorney General’s Office calling for Commissioner Susan Bitter Smith to be removed from office because of conflicts of interest.

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EXHIBIT K

http://azdailysun.com/news/local/burns-tobin-win-of-seats-on-corporation-commission/article_c4e4206b-0f19-5695-9013-079926f58c9b.html

Burns, Tobin win 2 of 3 seats on Corporation Commission

By Howard Fischer Capitol Media Services Nov 9, 2016



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By Howard Fischer

Capitol Media Services

PHOENIX -- The state's largest electric company is going to get at least one of the utility regulators it wants for the \$4 million it spent on the campaign for Arizona Corporation Commission.

And probably a second.

Preliminary results show incumbent Bob Burns winning a second four-year term. Burns was supported for reelection by Pinnacle West Capital Corp., parent of Arizona Public Service, which put \$4 million into TV commercials and other media to ensure that the commission remains an all-Republican affair.

Incumbent Republican Andy Tobin, also supported by Pinnacle West, was running second among the five contenders. But remained unclear late Tuesday whether all that spending would also mean the utility would be successful in replacing retiring commissioner Bob Stump with Boyd Dunn, the third Republican in the race and also backed by Pinnacle West.

It didn't hurt Burns that he also was the beneficiary of some of the \$2.4 million that Save Our AZ Solar put into the race on his behalf as well as Democrat challenger Bill Mundell. While Pinnacle West got behind Burns financially, Kris Mayes who is running the Save Our AZ Solar campaign, said both he and Mundell have been consistent supporters of solar energy.

Left out in the financial cold in all of this heavy spending was Tom Chabin, the other Democrat running for one of the three seats up for grabs.

SolarCity itself spent \$41,000 on his behalf along with Mundell and Burns in mailings to the company's customers. But Chabin was not part of the bigger ad campaign by Save Our AZ Solar, with only a late-in-the-campaign \$1,200 expenditure for signs.

Mayes said that with less money to spend than Pinnacle West, it came down to a question of priorities.

"We wanted to be sure to support two very pro-solar and pro-consumer advocates for the Corporation Commission," she said. And there's also the fact that both have a record: Mundell with his prior service on the panel and Burns who was first elected to the commission four years ago.

All that support by both sides for Burns appeared to be paying off: Preliminary results showed him in the lead in the five-way race for the three available seats. The vote tallies among the rest of the field, however, were too close to each other to make predictions.

That question of who are the pro-solar and pro-consumer candidates got muddled during the extensive campaign.

The Pinnacle West-financed TV ads promoted Burns, Dunn and Tobin as "Arizona's sustainable solar team," complete with pictures of commercial-scale solar power collectors. And it says the trio will represent Arizona taxpayers, not out-of-state special interests," a slap at California-based SolarCity.

But the truth of it all comes down to the more difficult question of balancing the goal of diversifying the state's sources of energy with the costs.

Most directly at issue is that customers who generate their own rooftop power get a credit for anything they do not need and sell to the utility. That is a credit at retail rates.

Then, on an annual basis, all accumulated excess credits are paid off in cash, albeit at a lower wholesale rate.

All Arizona utilities contend that essentially requires the customers who cannot afford rooftop solar to pick up more than their fair share of the cost of building and operating the grid. They want a change in the reimbursement formula.

Mundell and Chabin, for their part, argue that any electricity produced by homeowners means less need for utilities to build expensive power plants and then charge customers for their construction.

Utility policy aside, the race has featured echoes of what happened in 2014 when two organizations that refuse to disclose donors spent \$3.2 million to help elect Republicans Tom Forese and Doug Little.

An APS spokesman has refused to confirm or deny that his company or its parent was the source of that cash. And the FBI has opened a probe into the 2014 race, though it remains unclear whether the "dark money" is at the center of that or some activities by a now-retired commissioner.

Burns, in turn, has subpoenaed the records of both companies. They have produced some already public documents but have turned around and sued Burns to block any further efforts to get into their books.

Attorney General Mark Brnovich has issued an opinion saying that Burns is entitled to certain records from APS as a regulated utility. But he said it will take the votes of three of the five commissioners to get at the books of Pinnacle West, votes that, date, Burns has been unable to get.

Mundell and Chabin have vowed to provide those votes if elected.

Pinnacle West backed Burns despite the subpoenas. Company CEO Don Brandt has said he finds Burns preferable to either of the Democrats, contending that their statements during the campaign show they cannot be trusted to be fair.

The new commission will be the one to review a request by APS for an 8 percent rate hike as well as rate requests by other Arizona utilities.

EXHIBIT L



RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2017 FEB -7 A 11: 23

Memorandum

From the office of
Commissioner Bob Burns
Arizona Corporation Commission
1200 W. WASHINGTON
PHOENIX, ARIZONA
(602) 542-3682

TO: Docket Control

DATE: February 7, 2017

FROM: Commissioner Bob Burns' Office

RU-00000A-17-0035

SUBJECT: Create New Docket

Commissioner Burns requests that a new docket entitled, "Development of New Transparency and Disclosure Rules related to Financial Expenditures by Regulated Monopolies, Intervenor and other Stakeholders" be created. The attached materials explain the purpose of the proceeding.



CERTIFICATION OF SERVICE

On this 7th day of February, 2017, the foregoing document was filed with Docket Control as correspondence from Commissioner Bob Burns and copies of the following who have not consented to email were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commissioner's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

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By:


Lynn Jahnke

Executive Aide to Commissioner Bob Burns

COMMISSIONERS
TOM FORESE – Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN



BOB BURNS
Commissioner

ARIZONA CORPORATION COMMISSION

February 7, 2017

Dear Commissioners, Stakeholders and Parties:

Consistent with the detailed justification and objectives outlined in the memorandum attached to this letter, I have opened this docket aimed at studying and rectifying problems regarding financial contributions from regulated monopolies or other stakeholders who may appear before the Arizona Corporation Commission ("ACC") that may directly or indirectly benefit an ACC candidate, a sitting commissioner or key ACC staff. Obviously, such contributions can lead to undue influence over ACC personnel, and thereby undermine the objectivity and independence of our fourth branch of government that our state constitution and citizens so wisely demand. In the worst cases, such contributions can lead to "regulatory capture" in which ACC commissioners act as biased proxies for the regulated monopolies or other stakeholders who are financially backing them. These dangers warrant immediate, in-depth study and solutions created through robust new transparency and disclosure ("T&D") rules. A principal objective of this docket, then, is to develop robust new T&D rules governing regulated monopolies and intervenors, as well as effective new T&D rules governing ACC commissioner candidates, sitting commissioners, their personal staff and other key ACC staff members.

The comprehensive statement of the problem attached to this letter will guide the investigation required of current T&D issues threatening the independence and objectivity that is constitutionally demanded of the ACC and its elected commissioners. The investigation and study required under this docket will include submissions by the Commissioners, ACC staff, regulated monopolies, intervenors, members of the Arizona public, and other stakeholders regarding the variety of circumstances for possible undue financial influence outlined in the attached memorandum. I invite submissions to this docket on these important topics and will also be inviting submissions to this docket via a letter filed in Docket No. E-01345A-16-0036.

The investigation under this docket will also include obtaining responses to subpoenas I previously served on Arizona Public Service Co. and Pinnacle West Capital Corporation in Docket No. E-01345A-16-0036. Those subpoenas are being duplicately filed in this docket, and the information obtained from then will be used as part of the investigation and rule development undertaken in this proceeding.

The process to be followed in this docket shall be as follows:

February 10, 2017: This letter and all accompanying materials shall be posted for public review on my individual web page accessible through:
<http://www.azcc.gov/commissioners/RBurns/default.html>.

I invite public comment, evidence and testimony regarding the T&D topics discussed in the Executive Summary by March 3, 2017. Please file your comments in this docket or email them to: RBurns-web@azcc.gov and I will file them in this docket your behalf.

March 3, 2017: Deadline for submissions of initial comments, evidence and testimony by regulated monopolies, intervenors and other stakeholders.

March 17, 2017: First workshop to gather input on and discuss the development of T&D rules at 10:00 a.m. in Hearing Room #2 at the Arizona Corporation Commission (1200 W. Washington Street Phoenix, AZ 85007).

March 24, 2017: Deadline for full compliance by Arizona Public Service Co. and Pinnacle West with the document production requirements of the subpoenas I previously issued to them.

Please look for additional information requests, workshop dates and times to be announced in this docket.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert L. Burns". The signature is fluid and cursive, with a large, stylized "B" at the end.

Robert L. Burns
Commissioner

Executive Summary

Purpose of the Proceeding

Longstanding legal standards and the political and economic policy sentiments embedded in Arizona's Constitution support robust transparency and disclosure ("T&D") measures to ensure properly informed decision-making by regulators, consumers, intervenors, competitors, stakeholders, and even regulated corporate executives, boards, shareholders and investors. T&D rules that allow for comprehensive and proactive examination by all regulatory and non-regulatory interested parties of formal or informal practices by regulated monopolies that might lead to undue positive or negative influence on regulators or regulatory staff are particularly critical to ensuring a fair, trustworthy, efficient, and objective regulatory environment and sound regulatory decision-making.

Arizona's constitutional history encourages new answers to problems, and the very structure and purpose of the Arizona Corporation Commission represented a bold, innovative solution to issues of corruption, legislative and judicial intransigence, and consumer exclusion that had plagued traditional governmental forms. Yet, the financial resources of today's regulated monopolies and other interested corporate players can exploit vast, new loopholes that undermine the objectivity, independence, transparency and consumer focus constitutionally expected of Arizona Corporation Commission commissioners and the Commission's staff. The spirit of innovation and improvement that motivated the creation of Arizona's fourth branch of government calls the Commission to consider anew all available alternatives to guard the objectivity and independence that our state's constitutional framers expected, and that our current citizens deserve.

To maximize the effectiveness of T&D practices, they must run both directions – applied externally to regulated monopolies and intervenors and imposed internally on regulatory officials and key staff. Comprehensive integration of such T&D expectations in agency ethics rules supports the same objectives as T&D imposed on regulated monopolies or intervenors, creates disincentives for practices that might lead to or be perceived as establishing undue influence in the regulatory process, and provides a disclosure safety net in the case of any failures by regulated monopolies to fully observe their own T&D obligations.

Areas in which robust T&D may be required to gain all the benefits described above for Arizona consumers and protect the interests of regulated industries, their competitors and their shareholders and investors include:

- Contributions by regulated monopolies or their affiliates in support of individual campaigns of Commission candidates or their affiliates;

- Contributions by regulated monopolies or their affiliates in support of non-Commission elected officials who may exercise influence over Commission candidates or elected Commissioners;
- Arrangement by which regulated monopolies or other interested parties provide current employment or business opportunities for family, friends, and close associates of a candidate or Commissioner, or facilitate future employment of business opportunities for a Commissioner or their key staff;
- Contributions by regulated monopolies or their affiliates to publicly sponsored events or charities with whom a candidate, commissioner or their immediate family member is associated as an employee, officer or board member;
- Contributions by regulated monopolies to any other entity or program with whom a candidate, commissioner or their immediate family member is associated as an employee, officer or board member;
- Contracts or other arrangements between regulated monopolies or their affiliates and persons appearing before the Commission or Commission staff, whether on behalf of the regulated entity or ostensibly on behalf of other stakeholders or interested parties; and
- Contributions by intervenors in Commission proceedings of the same type or nature as contributions by regulated monopolies that create the potential for influence over individual Commissioners or key Commission staff.

At this time, the Arizona Corporation Commission does not employ robust T&D rules for regulated monopolies or intervenors, and it has not implemented comprehensive T&D requirements for Commissioners, their personal staff or other key Commission personnel. To develop appropriate policy and implementing rules, it is critical for the Commissioners to comprehensively study the problems associated with the lack of such rules, the benefits of implementing such rules, the impacts of different rule structures and alternatives on regulated monopolies and their affiliates, and all legal issues associated with implementation of such rules.

The purpose of this proceeding is to implement the study mentioned above, to develop rule proposals for consideration by the Commissioners, and to implement appropriate rules to improve the T&D practices of the Commission and ensure the objectivity, independence and consumer protection expected by Arizona's constitutional principles.

The Need for Transparency – A Constitutional Mandate

The Arizona Corporation Commission ("ACC") is a unique governmental body, crafted by the framers of the Arizona Constitution and modified by Arizona's voters over time to perform broad functions of critical importance to Arizona citizens. The ACC is one of only seven such state entities created by constitutional command, and only one of thirteen with elected commissioners. This unique history and make-up presents the opportunity for the robust, independent decision-making intended by the constitutional framers. However, the same

structural characteristics that open the doors to independent decision-makers who are daily accountable to the voters also create the potential for regulatory "capture", one of the societal and economic ills the ACC was principally designed to prevent.

Records of the Arizona Constitutional Convention confirm that the principal supporters of the various provisions of Arizona's Constitution concerning corporate regulation were attempting "to remedy the accumulated evils and negligences of [the] period of industrial growth' that had preceded" the 1910 convention. John D. Leshy, *The Making of the Arizona Constitution*, 20 *Ariz.St.L.J.* 1, 88 (1988) (quoting R. Hofstadter, *The Age of Reform*, note 161, at 2-3). "[T]he framers . . . were particularly concerned with the need to avoid various pitfalls that they perceived the courts had put in the path of effective regulation" of corporate entities. *Id.* Among these were judicial decisions that had struck down corporate regulations under the federal constitutional clause preventing "impairment of contracts", or had otherwise voided state legislative attempts to address growing corruption scandals involving railroads and other large businesses. *See id.* at 88-89. According to relevant scholarship concerning the Arizona constitutional debates, the Arizona framers joined other western states "to head off such judicial challenges by constitutionalizing their 'suspicion of big business.'" *Id.* at 89. In short, the ACC was created to overcome the paralyzing influence large corporations had already proven adept at wielding in traditional legislative and judicial arrangements.

To overcome such corporate insulation tactics, the Arizona framers did not stop at merely constitutionally imbuing the state legislature with specific regulatory powers. Though they did that also, *see* *Ariz.Const.*, art. XIV, §§ 2, 14, the framers created an entirely separate branch of state government, an elected Corporation Commission, "vested with broad powers to regulate the activities of 'public service corporations,' defined to include private utilities and common carriers." John D. Leshy, *supra*, at 88; *Ariz.Const.*, art. XV. The ACC therefore holds an exceptional position as a constitutionally-established fourth branch of government; a branch uniquely assigned legislative, executive *and* judicial authorities. *See, e.g.* *Ariz.Const.*, art. XV, §§ 3-5, 13-14, 17, 19; *State v. Tucson Gas, Elec. Light & Power Co.*, 15 *Ariz.* 294, 305, 138 P. 781, 785 (1914) ("The functions of the Corporation Commission are not confined to any of the three departments named [legislative, executive and judicial branches], but its duties and powers pervade them all . . .") The powers vested by Arizona's framers in the ACC are, at least in part, "supreme" and may not be invaded by the other branches of government. *Tucson Gas, Elec. Light & Power Co.*, 15 *Ariz.* at 306 ("While [the ACC] is not so named, it is, in fact, another department of government, with powers and duties as well defined as any branch of the government, and where it is given exclusive power it is supreme. Its exclusive field may not be invaded by either the courts, the legislative or executive.")

The Arizona framers also intended that the ACC Commissioners be a uniquely protective form of governmental machinery assigned powers "primarily for the interest of the consumer." *Id.* at 308, 138 P. at 786. One of our Supreme Court's earliest pronouncements on the structure and intent of the ACC held:

It is to be remembered that the framers, and the people who adopted it, designed that our Constitution abandon the beaten path of precedents in Constitution making, and handle modern problems and conditions by advanced and up-to-date methods and formulas. The supervision and control of public utilities has ever been, and probably always will be, one of the most vexatious as well as vital questions of government. All persons agree that the capital invested in public service should receive reasonable remuneration, and that the services rendered should be efficient and practicable and to all patrons upon equal terms and conditions. With a full knowledge that these things had not been accomplished under the laws heretofore existing in this and other jurisdictions, the people in their fundamental law created the Corporation Commission, and clothed it with full power to investigate, hear and determine disputes and controversies between public utility companies and the general public. This was done primarily for the interest of the consumer. If he is dissatisfied with the rates and charges exacted of him by his public service corporation, he may file his complaint with the commission and secure an investigation and determination of the wrong charged. With trained, capable and conscientious commissioners, it is fair to assume that he will be granted a speedy hearing and a reasonable adjustment of his complaint.

Id. at 307-308, 138 P. at 786.

The latter reference to "trained, capable and conscientious" commissioners acting in a fair and reasonable manner exposes the parallel constitutional objectives that ACC commissioners be unbiased, objective, and accountable to the voters who elect them and the consumers they primarily serve. The Arizona Supreme Court recognized very early on in the same opinion the wisdom of the framers in creating the ACC as a truly independent and fair department basing its decisions on publicly disclosed facts, not behind-the-scenes influence. The court in *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 305-306, 138 P. 785-786 specifically noted that the wisdom of an independent fourth branch to perform utility regulatory functions was demonstrated in the laments of federal precedent from Iowa which contrasted that state's lack of a corporation commission with the situation in states like New York, Massachusetts and Wisconsin which "'have state commission of competent men, who give public hearings, and who do nothing behind doors, nor in secrecy - - a commission with no member interested as a taxpayer of the city and **with no member subject to influences other than the ascertaining of the truth and the facts.**'" (quoting *Des Moines Water Co. v. City of Des Moines (C.C.)*, 192 Fed. 193, 195 (emphasis added)). Further explicating the efficiency of Arizona's utility regulation structure, the Arizona Supreme Court adopted a federal court's observation that much litigation and expense is avoided by a state that has "'an impartial and nonresident commission or tribunal, with power to fix . . . rates at a public hearing, and all interested parties present, with the tribunal selecting its own engineers, auditors, and accountants.'" *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 305-306, 138 P. 785-786 (quoting *Des Moines Gas Co. v. City of Des Moines (D.C.)*, 199 Fed. 204, 205). Thus, the Supreme Court members closest in time to the constitutional birth of

the ACC acknowledged the framers' expectation that the Commissioners be competent, act publicly, have no personal interest in the matters being decided before them, and be subject to no influences "other than the ascertaining of the truth and the facts."

Transparency, objectivity, accountability to Arizona's utility consumers and an absence of influence by corporations affected by their decisions are thus hallmark expectations for ACC commissioners under the Arizona Constitution. The Commissioners, and all candidates who strive for such office, operate under a constitutional mandate to avoid influence by those who may or do appear before them, particularly those subject to their regulation. The Commissioners are legally bound to decide questions in their sphere of powers on facts and the objective principles that guide appropriate regulatory decisions in the fields for which they are delegated responsibility by the people. Deciding anything based on the promise or potential of financial or other support benefitting a commissioner or those close to him or her personally is constitutional blasphemy and rejects the sacred trust Arizona's constitutional framers so uniquely fixed upon the Commission.

The Need for Transparency – A Matter of Public Confidence

Given the unique responsibilities of ACC officials to give a primary consideration to the interests of Arizona consumers, it is logical that such consumers would recoil at the perception that ACC officials were primarily, or equally, or even just potentially influenced by considerations of personal benefit or association in performing their public duties. As the Supreme Court of Arizona explained in addressing ACC commissioner conflict of interest standards under A.R.S. § 40-101:

The principle which governs our opinion is fundamental and lies at the core of representative government. Our three corporation commissioners are representatives of the people, elected to office with specific constitutional and statutory duties. They must be free of conflicts both at the point of election and during tenure in office.

Jennings v. Woods, 194 Ariz. 314, 316, 982 P.2d 274, 276 (1999). The Court added that "[p]ublic confidence in government officers is vital" as it held an ACC candidate ineligible because he held a securities registration and was affiliated with a registered securities dealer (making both of them subject to ACC regulation).

This notion of protecting public confidence in government operations is the same policy that compels that judicial officers avoid even the "appearance of impropriety". The simple conclusion emanating from such well-established policy is that even the potential of regulatory capture by regulated monopolies or other stakeholders can so destroy critical public confidence that even the potential that commissioner objectivity and independence might be compromised must be curbed.

Thus, binding Arizona law confirms as a "fundamental" and "core" concept of our state governmental structure that all ACC commissioner candidates, and all elected commissioners, must be free of conflicts through association with regulated monopolies, and that the principal objective of such standards is to ensure public confidence in ACC proceedings. There can be no greater justification for policies of the Commission than the preservation of the essential and unwavering public confidence in the objectivity and independence of ACC officials, elected and non-elected alike.

Undue and Undisclosed Influence Comes in Many Forms

The need for thoughtfully constructed, robust T&D rules is all the more pressing given the many different varieties of powerful, yet largely undetectable, avenues for influence our modern civic and economic structures offer. While outright bribery or graft is still possible, many far more subtle and pernicious approaches also exist for benefitting, and thereby influencing, an ACC candidate or official while maintaining secrecy and denying the electorate and utility consumers the ability to assess whose interests an ACC candidate may really be prioritizing. Most of these are difficult to identify for investigation, let alone to fully expose, without the help of voluntary disclosures. The following is a brief and incomplete list of alternative paths for surreptitiously generating influence with a candidate or elected official.

A. Contributions to "Independent" Expenditure Groups

One of the most efficient and pernicious forms of influence peddling available under the current Arizona system includes contributions made anonymously to support independent political expenditure groups that are purportedly unaffiliated with a registered candidate or political party. By making the contribution known to a candidate informally through a communication network that involves no written record, a contributor ensures the candidate knows of their lucrative support while allowing the candidate and their campaign plausible denial of any coordination with the independent group or its donors. Given the relatively small community of political campaign professionals, lobbyists, and elected officials in Arizona, such communication networks can be very small and effective at relaying messages of support and gratitude between candidates and donors without any public acknowledgement on either side of the arrangement. They can even very efficiently help a candidate direct the spending made possible by such donor largesse in a most informal and clandestine process.

The temptations to use such machinations to avoid disclosure rules and mislead the voting public are myriad. For instance, the principals of an independent expenditure group can be motivated by their own income interests – whether that be through salary they pay themselves to manage the organization or to supply it with advertising resources, or by bolstering their image as a "king-maker" or as carrying heavy political influence, key marketing tools for

other business pursuits in lobbying or campaign management. It is not hard to imagine those with lobbying aspirations or interests wanting to use independent expenditure groups to prove to large corporate donors or wealthy business people their personal dexterity at linking such entities or persons with the politically influential in our state. The independent expenditure group may alternatively be manned by party loyalists or operatives who gain power, prestige and positions within their chosen political organization by providing candidates from that party the monetary resources they need for campaigning.

On the donor side, the independent expenditure option allows corporate citizens to make sizeable and influential donations without having their customer base learn what side of the political aisle they are financially supporting. In the case of regulated monopolies, exposure that the entity supports candidates of any particular party risks upsetting a large customer constituency whose agitation can motivate regulatory complaints and adversarial appearances in proceedings where the regulated entity would otherwise falsely cultivate the perception of general customer support, or at least customer disinterest. Similarly, donors to independent expenditure groups may know that their open affiliation with a candidate risks votes for the candidate. For instance, opponents of an ACC candidate who openly courts financial backing from a regulated entity could mount an effective campaign charging the candidate with being "bought and paid for" by special interests he or she is supposed to oversee. By directing their contributions anonymously through an independent group, the regulated entity gets to improve the election potential of the candidates they believe will favor their interests without simultaneously offending voters who may dislike or distrust the corporate donor.

And there is little, if anything, stopping such motivated participants from communicating and coordinating with one another "under the radar" of election officials, the press, or the public. Consider, for example, a highly motivated independent expenditure group ("IEG") chair with a longstanding tie to a lobbying group and political aspirations for a state party chairmanship. It would take little effort for that person to "find" the governmental affairs officials at a regulated entity, arrange a lunch, and in the course of a few minutes of chatting about "what they are respectively up to" list various ACC candidates the IEG plans to support with advertising in the upcoming election and express how close the IEG chair is personally to the social circle Candidate X runs in. The regulated entity's employee can casually share how enthusiastic his or her employer is about Candidate X, express "regret" that they cannot express such support more directly to the candidate, but explain how willing they might be to help out the IEG with a large donation to help fund "whatever you think will help Candidate X the most." The expenditure group chair takes that and "thinks about it" by talking to an old lobbying friend who just happens to be close to Candidate X's campaign chair, mentioning the lunch recently with the regulated entity employee and asking how the lobbying friend thinks the IEG might best help candidate X if the IEG just happened to land a large donation. The lobbying friend makes one call to the campaign chair to inquire how the campaign is proceeding and what they wish they had more money for. When the circle is closed and the money flows to precisely what Candidate X desired,

the lobbying friend makes sure to mention to the candidate's campaign manager just how "generous" she hears the regulated entity is being with their parties' candidates this year, or otherwise share some relatively transparent "coded" confirmation of the support provided by the regulated donor.

The foregoing example exposes how easily coordination is accomplished surreptitiously and with plausible denial baked in. One can imagine many instances in which the participants would hardly make the efforts outlined above to keep their coordination secret but in which they would still feel relatively well protected from discovery. The misuse of so-called "dark money" arrangements therefore promises to entice less-than-scrupulous candidates, campaign officials, expenditure group principals, and regulated monopolies to engage in cloaked influence-peddling. What suffers, of course, is the electorate who will vote for candidates having no idea of their secret reliance on and allegiance to regulated monopolies and misplacing their trust in the integrity and independence of the candidates they vote for. Also harmed are consumers of ACC-regulated services who count on commissioner objectivity in making critical regulatory determinations and policy that will impact consumer costs and service reliability. Finally, the entire Arizona populace is harmed because the potential for such invisible influence schemes robs the public of the critical confidence they both need, and deserve, in one of their most vital government institutions.

B. Contributions to Events or Entities That Can Directly Benefit a Candidate, Commissioner or Their Family and Friends.

It is plausible to expect that Commission candidates and even sitting commissioners might retain private interests outside the Commission that could benefit from direct or indirect support of regulated monopolies. It would not be unusual for a candidate to come from a position on a private policy advocacy group or even from a "think tank" established within the state university system. After all, recent reporting indicates that both Arizona State University and the University of Arizona have established "centers" that can apparently receive substantial private sponsorship funding. Conceivably, under current ACC rules a candidate might approach, or be approached by, a regulated monopoly concerning substantial financial contribution to an institute or center that pays the candidate a salary or that underwrites other substantial travel or other expenses for the candidate. The contribution would not appear as a campaign contribution, though the support it provides a candidate by ensuring their ongoing employment compensation and allowing them to extend their personal "brand" and reputation extensively through appearances and communications on behalf of their institutional employer could undoubtedly have even greater impacts than a direct campaign contribution. This is especially so because the amount of contributions to the candidate's "think tank" affiliate would not be limited by campaign expenditure laws.

Consider the example of Candidate X who works in a director capacity for an economics policy center at an Arizona university and plans to run for an ACC seat in the general election that is a year-and-a-half away. As part of his or her regular fundraising efforts, the candidate might approach a regulated monopoly and seek general donations to the policy center efforts, knowing that when received such funds can be used to directly or indirectly benefit the candidate. A regulated monopoly that is eager to show its support – and in turn capture a commissioner for future cooperation – might generously contribute to the center's budget or works. And, they might attempt to do this anonymously so that the money trail is never easy to spot or unravel.

Of course, the potential for abuse seems even greater if a sitting commissioner attempts to maintain such sponsorship relationships with regulated monopolies outside their ACC position after taking their position on the ACC. Depending on how the commissioner benefits from such "moonlighting", their dual position can create substantial opportunities for undue financial influence, and even capture, by generous sponsoring regulated entities. Only a broad and robust transparency and disclosure program will force such relationships into the light.

It is also not surprising that individuals aspiring to elected ACC positions might have spouses, children, other relatives, or even close friends who could benefit either directly or indirectly by contributions that might be facilitated by a regulated entity. As just one example, it could be quite easy for the entity to arrange a job for the spouse, family member or friend of a candidate or Commissioner with a subcontractor or vendor that is economically beholden to the regulated entity. Such deals can be cut with a simple phone call and are just the most dramatic example of so-called "straw donor" practices in which a regulated entity uses a proxy to provide the benefit. Arizona's lack of disclosure requirements for such activities encourage them. After all, the role of the regulated entity in such transactions is completely shielded from the public, and even other regulators, under the current system.

Many other paths also allow a regulated entity to provide direct or indirect financial benefits to someone the candidate or commissioner cares about. Imagine, for instance, a candidate whose spouse works for a local business lobbying association, or a government policy study or advocacy group. It is not difficult for the regulated entity to find ways to ingratiate themselves with, and even to financially benefit, the spouse by making material contributions to their entity or cause. Consider a local chamber of commerce entity headed by the husband of an ACC candidate whose continued employment and salary are dependent on the revenue the chamber group can generate annually. Now imagine that when that individual's wife initiates her campaign for an ACC seat, a regulated entity initiates a sizeable donation to the chamber group headed by the husband, sending the message that the donation may be renewed annually if the regulated entity remains pleased with the chambers' efforts.

Other examples abound. For example, a Commissioner's child may be the co-founder of a non-profit charter school entitled to public funding under Arizona law, and may co-own a for-

profit entity that owns and leases to the non-profit its school facilities. The lease rates impact the owners' annual incomes, and they can be increased when the budget of the non-profit school increases. One simple way to provide such extra financial capacity for rent payments is for a regulated entity to make material annual charitable contributions to the non-profit entity. Such contributions might come via a separate charitable foundation sponsored by the regulated entity, by the regulated entity encouraging its employees to contribute to the charter school, or by its encouraging or arranging for even third party vendors or subcontractors to make such contributions. By such arrangements it is relatively easy for a regulated entity to "wash" contributions intended to buy candidate or Commissioner goodwill or allegiance through seemingly benign charitable activities. Ironically, a particularly bold regulated entity might even tout such activities as evidence of its laudable corporate citizenship.

Still other alternatives could involve arrangements to financially benefit third parties on whom the candidate or Commissioner relies for other critical political support. For instance, a regulated entity could hire on a contract basis an individual to run "marketing" or "community relations" activities, knowing the individual is also responsible for helping the candidate or Commissioner gather a substantial amount of their campaign financial support from other donors. The contracted individual might thereby have considerable persuasive influence on the candidate or Commissioner that is well known to the regulated entity. While the regulated entity could plausibly claim its exclusive objective is to obtain unique marketing insight or public relations skills from the contracted individual, it could subtly, or not so subtly, tie its continued employment of the individual to their exercising their influence over the candidate or Commissioner at critical points.

C. Contributions to Charitable or Political Organizations.

Even a candidate's or Commissioner's own seemingly benign association with a politically neutral charitable organization or policy study group could serve as a leverage opportunity by a financially well-heeled regulated entity. After all, a candidate or Commissioner who is personally committed to the organization or uses their affiliation with the association as a political selling point could be heavily influenced by an entity's support of their charitable interest. For most struggling charitable groups, even a relatively small annual contribution – say \$10,000.00 - \$25,000.00 – could mean the difference between continued existence and collapse. It could also allow the creation of a new program garnering considerable public interest and support for which a candidate could claim much-needed credit. And, once the regulated entity creates the threat that its continued support may be pulled, it owns a leverage tool that can be deployed at opportune times.

D. Contributions to Support Civic Events.

The history of the ACC includes regular inquiries and concerns submitted by utility consumer constituents about the seemingly large dollars being spent by some utility entities on sponsorship of public buildings, like stadiums or youth ballfields, or sponsorship of public events like parades, festivals, concerts or the like. While consumer interest most often stems from concerns that the cost of such sponsorships are passed on to consumers in utility rates, a more subtle concern is equally justified. Public officials who may have significant influence over a candidate or Commissioner may depend on such support for their government's large events or venues. They can be leveraged by threats that the sponsoring entity may end or curtail its sponsorship to lobby the Commissioners, and this can place dramatic political influence on Commissioners.

Imagine, for example, the influence that can be wielded by a long-time county supervisor or city council member who has served as a key state-wide political party leader and who can help quickly and effectively garner political support from other party leaders and donors, or who can alternatively help deny effective party support to a candidate. By providing substantial financial support to the county or city for its events and venues, a regulated entity can gain substantial leverage over the county or city official and thereby extend its influence through that official to all candidates or Commissioners that hope to have the support of that county or city official and his or her party. The regulated entity can then call upon the county or city official with threats that it will otherwise withhold further support to county or city events unless he or she applies appropriate pressure on the Commissioners within their sphere of influence. Again, then, contributions used to claim good corporate citizenship can be deftly used to wrest influence that undermines consumer interests, and there is no paper trail now that allows such influence or potential for influence to be exposed.

E. Contributions to Other Political Allies the Candidate or Commissioner Desires to Support.

As a final example, individual political influence and power can be derived through perceptions that an individual can obtain financial support for others from powerful and wealthy sources. A Commissioner who is relatively new to Arizona political office may wish to pad their goodwill with other political office holders or office seekers. On the other hand, even a politically experienced Commissioner may wish to build his or her resume as a difference-maker for other candidates or elected officials. By successfully obtaining from regulated monopolies financial support for other candidates or elected officials a Commissioner can avoid the taint of any direct personal financial gain, while nevertheless obtaining a reputation and allegiances that can lead to reciprocal support leading to other elected offices, political appointments, or even private business opportunities.

A particularly forward-thinking Commissioner might, for example, cultivate sponsorships by regulated monopolies for the governor, several mayors, various legislators, and even county officials hoping to curry favor with such officials for later reciprocal political endorsements, or for subsequent paid political appointments, or to cultivate a reputation as an influence-peddler with deep contacts that can be marketed in a future lobbying or government relations consultant career. No matter what the Commissioner's particular long-term objectives might be, however, gaining the cooperation of the regulated monopolies who can provide financial support at their behest is critical. Regulated monopolies should be able to quickly spot such opportunities and exploit them to gain *quid pro quo* arrangements with Commissioners that are so motivated. Again, such arrangements will rarely be publicly visible. Instead, the outcome will just look like sponsorship by a regulated entity of a non-ACC political figure. But, at their heart, such sponsorships can be used to assert considerable influence over Commissioners.

F. Other Alternative Leverage Arrangements.

The variety in the foregoing examples demonstrates that improper influence through financial contributions can be obtained in a very wide variety of creative arrangements. The "common denominators" in all such alternatives is that the regulated entity makes arrangements for or provides some sort of financial support or compensation that ultimately benefits a candidate or Commissioner. Such benefits may be incredibly direct and material, like arranging a job for a Commissioner's spouse with a vendor or a regulated entity. Or they may be very indirect, like making contributions that allow the regulated entity to call in political pressure from outside political figures that the Commissioner wishes to please for long-term political gains. But whether or not the arrangement puts dollars into a candidate or Commissioner's pockets or campaign accounts, the benefits accrued through such outlays can be compelling and can effectively encourage a candidate or Commissioner to overlook facts, spurn objectivity and independent analysis, disregard consumer interests, and to seek instead to satisfy the objectives of the supportive regulated entity. Given the constitutional mandates that ACC Commissioners behave objectively and independently with focus on the facts and primary concern for the affected consumers, any such influence is improper.

And, finally, such improper influence is not a threat merely when it encourages allegiance of a Commissioner who recognizes the benefits they are obtaining from the regulated entity. Commissioners rely on their personal and agency staff to provide objective research and input, and to help them independently assess critical policy issues. If key staff have been improperly influenced to favor a regulated entity through arrangements they perceive as personally beneficial they may intentionally mislead Commissioners in material ways. Thus, the opportunities to exercise improper influence in ACC proceedings extend to influence aimed at key staff.

Constitutional Paths for Enforcing Transparency and Disclosure

Despite all the attention that the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010) has given to constitutional protections for corporate donations in support of individual election campaigns, the *Citizens United* court did not abandon the federal courts' historic consensus about the importance, and constitutionality, of transparency requirements concerning political donations. Eight of the nine justices in *Citizens United* agreed that disclosure on funding issues is important because "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." The continued vitality of those objectives means there exist many constitutionally permissible alternatives for ensuring the public adequate transparency in connection with corporate financial activities that could garner undue influence with ACC candidates or the Commissioners.

T&D policies have also historically enjoyed uniquely consistent bi-partisan support for well over a century in this country. Candidates and supporters of all political parties acknowledge the powerful assist disclosure requirements offer in curing public political corruption and informing voters about the financial interests that might influence candidates. The modern campaign finance disclosure era commenced in about 1890, and by 1927 most states had passed some form of campaign finance disclosure requirement. On the federal level, Congress enacted the Publicity of Political Contributions Act of 1910, 36 Stat. 822 (1910), which required "political committees" to file post-election reports regarding contributions and expenditures with the House of Representatives. Thus, cross-party support for mandatory disclosure of campaign donations has fostered legislated disclosure commands in this country for over 100 years. T&D requirements are therefore a thoroughly American solution to the dangers of undue influence, particularly the type of influence that might be purchased by persons or entities who stand to gain financially from that influence. And, the long history of T&D efforts at both the national and state levels has allowed for considerable experimentation and development, creating alternative models crafted to avoid overreaching, pitfalls, and loopholes. Though the further improvement of T&D policies is always possible, the Commission enjoys access to considerable historical precedent defining legally permissible options—particularly where, as here, we are dealing with T&D policies involving regulated monopolies.

A. The Focus of T&D Mandates is On Disclosure, Not Substantive Control of Speech.

This proceeding is intended to consider transparency and disclosure rules, not rules that substantively prohibit or restrict the types or amounts of financial contributions or expenditures regulated monopolies or intervenors can make. That latter kind are the type of regulations rejected in *Citizens United*.

As for disclosure requirements, U.S. Supreme Court jurisprudence dating from *Buckley v. Valeo*, 424 U.S. 1 (1976) has noted that any free speech burdens imposed by mandatory

disclosure requirements are minimal because disclosure laws "impos[e] no ceiling on campaign-related activities." Therefore, while disclosure requirements must still bear sufficient relation to government interests, the federal courts have consistently endorsed the constitutionality of very broad disclosure regulations. See *Citizens United*, 558 U.S. at 369-371; *McConnell v. FEC*, 540 U.S. 93 (2002). The majority opinion in *Citizens United* even upheld the disclaimer and disclosure provisions of the Bipartisan Campaign Reform Act, noting that the challenged provisions "provide the electorate with information" and "insure that the voters are fully informed." *Citizens United*, 558 U.S. at 367.

In the case of the ACC, it is reasonable to expect that regulated monopolies or other stakeholders may well attempt to influence the outcome of ACC elections, and that they may even intend to curry favor or influence with candidates, sitting commissioners, or staff through their financial expenditures. But the counter expectation is that a fully informed candidate base, press and electorate will be able to appropriately assess the risks or dangers of undue influence arising from various forms of disclosed arrangements and will provide the counter-pressures necessary to discourage improper influence peddling and prevent regulatory capture. Thus, the Commissioners should have no concern, and make no objection, that this proceeding threatens to impinge any form of protected speech. The intent is to ensure disclosure and prevent the fraud that is practiced on the public when a candidate claims the ability and intent to act independently and objectively even though a regulated entity or other stakeholder holds the power to undermine that independence.

B. The Federal and State Constitutions Permit Broad Disclosure Requirements.

As noted, relevant federal and state law have for decades approved disclosure requirements tied to legitimate governmental interests. The U.S. Supreme Court has recognized that disclosure of campaign expenditures supports governmental interests by providing valuable information to the electorate and thereby "aid[ing] the voters in evaluating those who seek . . . office" and "alert[ing] voter[s] to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." *Buckley*, 424 U.S. at 66-67. That court also acknowledged that campaign finance disclosure similarly meets legitimate government interests by "deter[ring] actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id.* at 67. The ACC and the constituency it serves certainly share those same important objectives.

Thus, so long as the disclosure requirements adopted for regulated monopolies or intervenors could help deter corruption, or help avoid the appearance of corruption among ACC candidates and Commissioners, or could aid voters in evaluating those who seek election to a commissioner seat, or could help alert the voters to interests of regulated monopolies or intervenors who are likely to appear before the ACC that a candidate or Commissioner may be supportive of, and so long as the rules do not impose substantive limits on contributions such entities or intervenors may make or benefits they may help facilitate for a candidate or Commissioner, the disclosure requirements should pass constitutional muster. This is not to say

that appropriate substantive limitations on benefits a regulated entity or intervenor might confer, or on benefits a candidate might accept, might not also be constitutionally permissible. However, the purpose of this proceeding is to develop appropriate transparency and disclosure rules and those rules need principally to be guided by determinations of what will help fulfill the government objectives outlined above.

C. Existing Rules, Scholarship and Proposals Offer Detailed Examples of Constitutionally Permissible T&D Requirements.

While the Commission's objectives should be to create an Arizona-specific set of rules fitted to real-time and anticipated circumstances in this state, enacted statutes and rules from other jurisdictions, as well as carefully constructed and thoughtful scholarship on the subject of disclosures, offer examples that can be borrowed and adjusted to our state's dynamics. The following are just a few examples of such disclosure standards and requirements that might be studied for adoption.

Federal Requirements

The statutes and implementing regulations and guidance governing federal campaign finance disclosures offer examples of constitutionally permissible transparency mandates. For instance, the regulations of the Federal Election Commission ("FEC") contain substantial rules governing election finance reporting. See 11 C.F.R. §§ 102-108 (attached at Appendix A). And the FEC publishes explanatory materials that elaborate on such reporting/disclosure mandates, like the FEC's *Campaign Guide for Corporations and Labor Organizations* (excerpts attached at Appendix B).

State Laws

Existing Arizona statutes and regulations, for example the provisions at Article 1.4 of Chapter 6 of Title 16, Arizona Revised Statutes (A.R.S. §§ 16-925 – 16-928) (attached at Appendix C), the Citizens Clean Election Act implementing regulations at Arizona Administrative Code ("A.A.C.") R2-20-109 (attached as Exhibit D), reflect existing candidate and donor disclosure requirements. The Arizona Secretary of State also publishes less formal guidance, such as the Instruction for Financial Disclosure Statements (attached at Appendix E) that address mandatory disclosure and reporting requirements related to candidate funding.

State law requirements from other jurisdictions similarly address T&D expectations related to campaign contributions. And, examples exist in other states of special campaign contribution disclosure requirements aimed at those who may be doing business with the state government, such as contractors. See, e.g., Md. Code, Elec. Law § 14-101, *et seq.*; R.I. Gen. Laws § 17-27-2, -3; 25 Pa. Cons. Stat. § 3260a(a) (requiring businesses awarded non-bid contracts to report all contributions made by their officers, directors, associates, partners, limited partners, owners, or employees, or their immediate family members, aggregating more than \$1,000 annually) (see Appendix F, G and H attached to this memorandum). These latter disclosure

requirements are aimed specifically at exposing benefits conferred by constituent organizations that may earn material financial benefits in return for their contributions through actions of a candidate once in office.

Proposed and Summarized Rules

There also exist proposed rules and scholarship that evince attempts at broadening disclosure requirements to expose and deter “pay-to-play” practices in which candidates for public office informally require campaign support by those doing business with or appearing before public agencies to assure their consideration for government business or other government help. One example, attached as Appendix I here, was a proposed federal Executive Order from 2011. Other guidance is found in scholarship like the Campaign Legal Center’s paper entitled *Disclosure Best Practices* (copy at Appendix J) which surveys the legal standards applicable to disclosure rules and summarizes current practices aimed at curbing improper economic influence over elected officials.

The bottom line is that many interested parties, government officials, and legal scholars have addressed, and continue to offer improvements to, effective T&D practices. The fruits of their efforts spreads a substantial array of alternatives for the ACC to consider, adopt or modify to meet its unique needs and circumstances.

The Roadmap Offered by Existing Rules and Scholarship

The examples of robust T&D practices provided in existing and recently proposed federal and state law demonstrate with some uniformity the key elements for creation of legally viable and practically effective regulations. Those elements include:

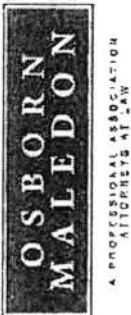
- A. Identifying the circumstances that may give rise to undue financial influence over ACC candidates, sitting Commissioners, and key ACC staff;
- B. Identifying which parties are required to make disclosures to properly inform voters and consumers about candidate ties to regulated monopolies or intervenors and to deter attempts at regulatory capture;
- C. Establishing the appropriate timing for all required disclosures so that voters and consumers obtain meaningful data in a timely fashion when it is most needed and when exposure will be most effective at ensuring voter education and deterrence of attempts at improper influence;
- D. Establishing what facts must be disclosed, including what level of detail must be disclosed to ensure the degree of public exposure needed for voter education and deterrence;
- E. Establishing the format for the disclosures;
- F. Establishing a mechanism for enforcement of the disclosure requirements, including investigatory processes, violation notice and hearing proceedings, and penalties or sanctions; and

- G. Establishing appropriate vehicles for ensuring widespread and efficient public access to disclosed information.

In short, the process must begin with education about all the circumstances under which regulated monopolies or their proxies can, or may have, attempted to provide benefits to or create influence over ACC candidates, sitting Commissioners, and key ACC staff members. This means investigating in detail how ACC candidate campaigns are financially supported, what type of people are involved in that process, and, particularly, how regulated monopolies might use "straw donor" tactics or surreptitious coordination strategies through networks of government affairs specialists, entity contractors, lobbyists, and campaign and party officials to financially promote and support an ACC candidate. It also means ferreting out all other methods by which regulated monopolies or intervenor stakeholders can use their networks, proxies, influence or finances to provide indirect financial benefits to candidates, sitting Commissioners, or those close to them. Finally, it means surveying in detail all methods by which regulated monopolies or intervenors might contribute financially in ways that help an ACC candidate or Commissioner to build political power or influence, develop future job prospects, or develop future business opportunities. These investigations must be factual, must delve into real-world examples, must call upon the regulated communities to voluntarily expose their past tactics and help identify existing loopholes, and must report findings in public for the voters and Arizona consumers to hear. Only then can the Commissioners accurately understand all the problems they should aim to fix.

And once the potential problems are identified, the Commissioners must comb the existing legal precedents and scholarship to identify the T&D practices that most directly and genuinely ensure eradication of those problems under the unique circumstances in Arizona. And when the Commissioners at last craft and select the new T&D rules to apply to their regulated and intervenor communities, as well as to themselves and their key staff, the Commissioners must be guided by a common understanding of and commitment to the expectation of Arizona's constitutional framers that they are striving to achieve true objectivity and independence for every elected Commissioner and exposure to the voters of any circumstances that might call that objectivity and independence into question.

EXHIBIT M



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16 SUPERIOR COURT OF ARIZONA

17 MARICOPA COUNTY

18 Arizona Public Service Company, an Arizona
19 corporation, and Pinnacle West Capital Corporation,
20 an Arizona corporation,

21 Plaintiffs,

22 vs.

23 Commissioner Robert Burns, a member of the
24 Arizona Corporation Commission, in his official
25 capacity,

26 Defendant.

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SEP 09 2016



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J. BAKER
DEPUTY CLERK

No. CV 2016-014895

APPLICATION FOR
AND MEMORANDUM OF
POINTS AND AUTHORITIES
IN SUPPORT OF
PRELIMINARY INJUNCTION

And

APPLICATION FOR ORDER
TO SHOW CAUSE



A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

1 Pursuant to Ariz. R. Civ. P. 65, Plaintiffs Arizona Public Service Company ("APS") and
2 Pinnacle West Capital Corporation ("Pinnacle West"), APS's parent company, collectively, the
3 "Companies," respectfully move for a preliminary injunction restraining Arizona Corporation
4 Commissioner Burns from compelling the production of documents, responses to information
5 requests, and testimony pursuant to subpoenas he served on the Companies on August 26, 2016.
6 This application is supported by the Companies' Verified Complaint.

7 INTRODUCTION

8 Last summer, media reports speculated that the Companies donated money in 2014 to
9 certain politically active 501(c)(4) social welfare organizations. Arizona law permits such
10 contributions and does not require their public disclosure. Nevertheless, Commissioner Burns—
11 who is up for reelection this fall—asked the Companies "voluntarily" to refrain from any political
12 expenditures in the 2016 election cycle. When the Companies refused to muzzle themselves,
13 Commissioner Burns asked APS to produce any records of its political expenditures in 2014.
14 When APS demurred, Commissioner Burns launched an investigation that culminated in the
15 challenged subpoenas, which compel APS and Pinnacle West to provide written information
16 concerning, among other things, their charitable contributions, political expenditures, and
17 lobbying expenditures made between 2011 and 2016. The subpoenas also compel testimony by
18 CEO Don Brandt on October 6, 2016. To the Companies' knowledge, never before has a single
19 Commissioner issued a subpoena targeted at a company's political expression, disconnected from
20 any Commission-authorized investigation, without any allegation of illegality.

21 This Court should issue a preliminary injunction suspending any obligation to comply
22 with the subpoena. *See Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n*, 133 Ariz. 500 (1982).
23 **First**, the subpoenas are massively overbroad relative to any purportedly legitimate purpose. To
24 give his investigation a sheen of legitimacy, Commissioner Burns has repeatedly insisted that its
25 purpose is to ensure that ratepayers are not being charged for APS's charitable contributions,
26 political expenditures, and lobbying expenses. But, as explained below and as Commissioner
27 Burns should well understand, the bulk of information sought by the subpoenas is patently
28 irrelevant to that stated purpose. Thus, the Court should enjoin their enforcement as seeking

1 irrelevant information, unduly burdensome, and calculated to harass.

2 *Second*, the subpoenas violate the First Amendment. The context makes clear that, in
3 reality, the subpoenas are intended as payback for the Companies' refusal to "voluntarily" refrain
4 from speech during the current election season and are calculated to deter the Companies'
5 political expression. Commissioner Burns has admitted as much: he publicly described the
6 purpose of his inquiry as to prevent "utility overspending and overparticipating ... in the elections
7 of Corporation Commissioners." Complaint ¶ 24 & Ex. 9. The First Amendment does not
8 allow government officials to issue subpoenas to retaliate against or discourage political speech.

9 *Third*, Commissioner Burns lacks authority under Arizona law to issue the subpoena. To
10 the extent that the subpoenas are motivated by the Commissioner's own personal "view [that] it
11 [is] unacceptable and inappropriate for public service corporations or others to make campaign
12 contributions," Complaint ¶ 10 & Ex. 2, that view has not been shared by the Legislature, which
13 is tasked by the Constitution with regulating campaign finance, or by the citizens of Arizona who
14 exercise lawmaking power through the initiative process. Commissioner Burns may not use
15 subpoenas to override this legislative judgment.

16 *Fourth*, underscoring the subpoena's improper motivation, Commissioner Burns has
17 demanded to depose the Companies' CEO Don Brandt, even though Mr. Brandt is not the most
18 knowledgeable witness about the expenses APS seeks to recover through rates. The Court should
19 not allow Commissioner Burns to use subpoenas to engineer a pre-election spectacle.

20 *Fifth*, further confirming the improper motive, Commissioners Burns has indicated his
21 intention to make public all records he receives, without regard to whether they are business
22 confidential. That flatly violates Arizona law, and plainly is calculated to harass.

23 The Court should declare that the Commissioner's subpoenas go beyond his lawful
24 authority and enter an order enjoining enforcement of the subpoenas.

25 **FACTUAL BACKGROUND**

26 Last summer, following speculation in the media that APS had contributed money to
27 501(c)(4) organizations that were active in the 2014 elections for Corporation Commission, and
28 in advance of his own reelection bid this year, Commissioner Burns launched his effort to deter

1 any participation by the Companies in the political process. On September 8, 2015,
2 Commissioners Burns and Bitter Smith publicly issued a joint letter noting “APS’s alleged
3 contributions to political campaigns” and “request[ing] that all public service corporations and
4 unregulated entities that appear before the Commission agree to voluntarily refrain from making
5 campaign contributions in support of or in opposition to Corporation Commission candidates.”
6 Complaint ¶¶ 7-8 & Ex. 2. Although the Commissioners acknowledged that “laws governing
7 campaign finance are not within the Commission’s purview” and that there were no allegations
8 of any illegality, they nevertheless stated that they personally “view it as unacceptable and
9 inappropriate for public service corporations or others to make campaign contributions in support
10 of or in opposition to any candidate for the Corporations Commission.” *Id.* ¶¶ 9-10 & Ex. 2.

11 On October 23, 2015, the Companies responded and respectfully declined “to forfeit any
12 of their First Amendment rights to speak on public issues.” Complaint ¶ 11 & Ex. 3. Undaunted,
13 Commissioner Burns pressed ahead. On November 30, 2015, he sent another public letter to
14 APS stating that “in my opinion, your support for any particular candidate should be open and
15 transparent.” Complaint ¶ 12 & Ex. 4. Based on that personal opinion, Commissioner Burns
16 “ask[ed] APS to provide my office with a full report of all spending related in any way to the
17 2014 election cycle.” *Id.* The ostensible purpose was “to find out if APS has spent ratepayer
18 money to support or oppose the election of Arizona Corporation Commission candidates” and
19 “to ensure that only APS’s profits are being used for political speech.” *Id.*

20 APS responded on December 29, 2015, confirming that “any political contribution ... is
21 not treated as an operating expense recoverable in rates.” Complaint ¶ 14 & Ex. 5.

22 In a January 28, 2016 letter, Commissioner Burns “embark[ed] upon the next stage of
23 [his] inquiry into APS’s possible campaign contributions” in the 2014 election cycle. Complaint
24 ¶ 15 & Ex. 6. The letter explained that this “next stage” was necessary because APS had “rejected
25 [the] proposal” to “voluntarily agree to refrain from making political contributions ... in the
26 upcoming election cycle,” and then had declined to “provide a report listing any campaign
27 contributions ... by APS in 2014.” Complaint ¶ 16 & Ex. 6. Commissioner Burns announced
28 his intent “to broaden my inquiry to include funds expended on all political contributions,

1 lobbying, and charitable contributions, *i.e.* all donations made—either directly or indirectly—by
2 APS or under APS’s brand name for any purpose.” APS did not respond.

3 However, during a Commission meeting on April 12, 2016, Commissioner Burns
4 declared that “[a]ll votes of this Commission are a tool to be used,” and that he “will not support
5 any further action items requested by APS with the exception of an item that might have health
6 or safety components” until APS complied with his demands. Complaint ¶ 19 & Ex. 7.

7 In August 2016, Commissioner Burns announced his intent to use Commission resources
8 to retain an attorney to investigate campaign expenditures in Commissioner elections to prevent
9 “utility overspending and overparticipating, if you will, in the elections of Corporation
10 Commissioners.” Complaint ¶¶ 23-24 & Ex. 9. On August 11, the Commission declined to
11 authorize any expenditure for such an investigation. Complaint ¶ 25 & Ex. 9.

12 On August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of
13 this Complaint. Complaint ¶ 26 & Ex. 1. A cover letter justified the subpoenas on the ground
14 that “APS has refused to voluntarily answer my questions about any political expenditures that
15 APS/Pinnacle West may have made,” and that subpoenas were needed to “determine whether
16 APS has used ratepayer funds for political, charitable or other expenditures.” Complaint ¶¶ 27-
17 28 & Ex. 1. Commissioner Burns stated that he “intend[s] to publicly file all documents related
18 to this investigation.” Complaint ¶ 33 & Ex. 1.

19 The subpoenas ordered APS and Pinnacle West to provide, by September 15, 2016,
20 documents and information including: (1) all documents “of any kind that describe arrangements
21 governing Pinnacle West’s expenditures or donations of funds for any purpose under APS’s name
22 or brand”; (2) all documents “of any kind that describe the arrangements governing the APS
23 Foundation’s expenditures or donations of funds for any purpose under APS’s name or brand”;
24 (3) for APS, in each year 2011-2016: “each charitable contribution,” “each political
25 contribution,” “each expenditure made ... for lobbying purposes,” “each marketing/advertising
26 expenditure,” and “a list of all expenditures to 501(c)(3) and 501(c)(4) organizations”; (4) for
27 Pinnacle West, in each year 2011-2016: “all charitable contributions,” “all donations for political
28 purposes,” “all expenditures to 501(c)(3) organizations,” “all expenditures to 501(c)(4)

1 organizations,” and “each marketing/advertising expenditure”; and (5) information on “any
2 foundations or other entities (formed for charitable or other philanthropic purposes) that are
3 related to APS and/or Pinnacle West,” including “how these entities are funded.” Complaint ¶ 29
4 & Ex. 1. In addition, the subpoenas demand that the Companies’ CEO Donald Brandt appear for
5 testimony on October 6, 2016. Complaint ¶ 30 & Ex. 1. The subpoenas were served on August
6 26, 2016. Complaint ¶ 34.

7 STANDARD OF REVIEW

8 “When an Arizona administrative agency unreasonably infringes on the liberties of a
9 corporation, ... the Arizona courts ... must be able to curb the abuse of power ... Thus, if an
10 administrative agency’s investigation becomes a tool of harassment and intimidation rather than
11 a means to gather appropriate information, the appropriate court may intrude and stop the
12 incursion into the constitutional liberties of the parties under investigation.” *Polaris*, 133 Ariz.
13 At 506-07. “[A] party may resist [the] Commission’s subpoena on grounds that the inquiry is
14 not within its scope of authority, the order is too vague, the subpoena seeks irrelevant
15 information, or the investigation is being used for an improper purpose, such as to harass.”
16 *Carrington v. Ariz. Corp. Comm’n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000).¹

17 “A party seeking a preliminary injunction must show a strong likelihood of success on
18 the merits, a possibility of irreparable injury if the injunction is not granted, a balance of hardships
19 weighing in his favor, and public policy favoring the requested relief.” *TP Racing, L.L.P. v.*
20 *Simms*, 232 Ariz. 489, 495 ¶ 21 (App. 2013). “A court applying this standard may apply a ‘sliding
21 scale.’” *Ariz. Ass’n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12 ¶ 12 (App.
22 2009). “In other words, the moving party may establish either 1) probable success on the merits
23 and the possibility of irreparable injury; or 2) the presence of serious questions and that the
24 balance of hardships tips sharply in favor of the moving party.” *Id.* (quotations and alterations
25 omitted).

26
27 ¹ Here, the subpoenas have *not* been issued by the Commission, but instead by Commissioner Burns acting alone.
28 Because Commissioner Burns’ actions are unprecedented, the proper procedural path for challenging the subpoenas
is unclear. Out of an abundance of caution, the Companies have filed a motion to quash before the Commission
contemporaneously with the filing of this lawsuit and motion for preliminary injunction. The Companies have also
lodged objections with Commissioner Burns.

1 ARGUMENT

2 I. THE COMPANIES ARE LIKELY TO PREVAIL ON THE MERITS.

3 A. The Bulk of the Information Sought Is Irrelevant to Ratepayer Protection.

4 Commissioner Burns has claimed the subpoenas are justified to assure that ratepayers are
5 not being charged for charitable, political, or lobbying expenditures. *See* Complaint ¶¶ 12, 26,
6 33 & Exs. 3, 8. However, the bulk of the information sought by the subpoenas is irrelevant to
7 that purpose. *See Carrington*, 199 Ariz. At 305 ¶ 9 (Commission subpoena may not “seek[]
8 irrelevant information”).

9 Utility rates are set in rate case proceedings in which the Commission reviews the utility’s
10 books and records for a “test year”—a specified twelve-month period—and uses data from that
11 test year to determine the amount of revenue the utility requires to cover its costs. *See* Ariz.
12 Admin. Code 14-2-103; *Tucson Elec. Power Co. v. Ariz. Corp. Comm’n*, 132 Ariz. 240, 246
13 (App. 1982) (describing use of test year); Complaint ¶¶ 36-47 (describing ratemaking process);
14 *see generally, e.g., In re Arizona Pub. Serv. Co.*, 258 P.U.R.4th 353 (A.C.C. June 28, 2007).
15 Specifically, the Commission examines all operating expenses claimed by the utility and the
16 value of the utility’s invested capital (or “rate base”) during the test year. Complaint ¶¶ 38-39.
17 Commission Staff performs an audit to ensure that the operating expenses claimed by the utility
18 are in fact recoverable in rates. *Id.* ¶ 40. An independent accounting firm also reviews APS’s
19 books to ensure that all expenses are properly classified. *Id.* Based on the operating expenses
20 incurred in the test year and deemed to be recoverable, and based on the utility’s invested capital
21 in the test year multiplied by a fair rate of return, the Commission determines the utility’s revenue
22 requirement. *Id.* ¶¶ 37-40. It then uses that revenue requirement to set the rates that the utility
23 will collect going forward. *Id.* ¶ 41. Once set, rates are not adjusted to reflect changes in
24 operating expenses or rate base, until the utility undertakes a new ratemaking based on a more
25 recent test year. *Id.* ¶ 41; Complaint Ex. 10.²

26
27
28 ² The one exception are expenses that may be recovered through adjustor mechanisms. These expenses are specified
in Commission Orders, are transparently calculated and updated in Commission dockets, and do not include the
types of expenses at issue in the subpoena.

1 APS's current rates were set based on a 2010 test year. Complaint ¶ 41. In other words,
2 the current rates reflect solely the operating expenses that APS incurred in 2010 and for which it
3 claimed recovery, and that the Commission found to be recoverable after the Staff's audit. *Id.*
4 ¶¶ 40-41.³ If APS incurred other expenses in 2010, but did not seek their recovery, those other
5 expenses would not be reflected in rates. *Id.* ¶ 41. Currently, APS is seeking new rates, based
6 on a 2015 test year. Thus, these new rates will reflect only 2015 operating expenses claimed by
7 APS and found to be recoverable after an audit. Any expenses APS incurred in 2011, 2012,
8 2013, 2014, and 2016 are categorically irrelevant to the rates customers currently pay or will pay
9 under the new rates, because those rates—as just explained—are based solely on expenses
10 incurred in the test year (2010 for current rates, and 2015 for proposed new rates). Pinnacle
11 West, meanwhile, is not a regulated entity and does not recover its operating expenses in rates.⁴

12 Accordingly, the bulk of the information demanded by Commissioner Burns is irrelevant
13 to the advertised purpose of the subpoena. APS should not be compelled to produce documents,
14 information, or testimony relating to its expenses in any year other than a test year. And Pinnacle
15 West should not be compelled to produce any documents or testimony at all.

16 **B. The Subpoenas Violate the First Amendment.**

17 The First Amendment “has its fullest and most urgent application to speech uttered during
18 a campaign for political office.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339
19 (2010). “Corporations..., like individuals, contribute to the discussion, debate, and the
20 dissemination of information and ideas that the First Amendment seeks to foster.” *Id.* at 343
21 (internal quotation marks omitted). “The First Amendment protects political association as well
22 as political expression,” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) (citing *NAACP v. Alabama*, 357
23

24 ³ APS has made clear that it did not and will not seek to include any political contributions in the expenses it seeks
25 to recover in rates. See Complaint ¶ 42 & Ex. 5. Likewise, charitable contributions may not be recovered in rates.
26 See *In re Application of Sulphur Springs Valley Elec. Coop., Inc.*, 2009 WL 2983260 (A.C.C. Sept. 8, 2009). APS
27 likewise does not seek to recover lobbying expenses in rates. The Commission has held that if APS does seek to
28 recover any of its lobbying costs in rates as useful to customers, “APS must provide the itemized lobbying costs
associated with each benefit it alleges resulted from the specific lobbying activity.” *In re Arizona Pub. Serv. Co.*,
258 P.U.R.4th 353 (A.C.C. June 28, 2007).

⁴ Pinnacle West does provide business services to APS. To the extent APS seeks to recover in rates the cost of
paying Pinnacle West for those business services, the relevant expenses would be submitted as part of the test-year
ratemaking described above and subjected to Commission review and audit before they could be included in rates.

1 U.S. 449 (1958)), which encompasses financial contribution to political activities or charitable
2 organizations. *Id.* at 65. Strong First Amendment interests also exist in anonymous speech.
3 *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342-43 (1995). Consequently, compelled
4 disclosure of political or charitable contributions can violate First Amendment rights. *Buckley*,
5 424 U.S. at 64; *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008).

6 ***I. The Subpoenas Discriminate Against the Companies Based on Their***
7 ***Viewpoint and Are Calculated to Discourage Political Speech.***

8 Commissioner Burns' subpoenas violate the First Amendment for the independent reason
9 that they discriminate based on viewpoint and are calculated to deter political speech. Indeed,
10 they are a textbook example of the kind of abuse the First Amendment protects against. The
11 subpoenas are aimed selectively at two companies after they refused to "voluntarily" abstain
12 from political speech—companies against which Commissioner Burns is campaigning in seeking
13 reelection. Complaint Ex. 8 (Commissioner Burns' website describing "my battle with APS" as
14 his top issue). Government action burdening speech violates the First Amendment when it is
15 "adopted or is enforced in order to harass," *Citizens United*, 558 U.S. at 370, such as when it
16 discriminates based on the speaker's viewpoint or is calculated to deter expression.

17 That is the case here. *First*, the subpoenas compel disclosure selectively based on the
18 viewpoint and identity of the speaker. From the very start of his inquiry, Commissioner Burns
19 has focused on "APS's alleged contributions to political campaigns," Complaint ¶ 8 & Ex. 1, and
20 has railed against "*utility* overspending and overparticipating" in Commission elections.
21 Complaint ¶ 22 & Ex.7 (emphasis added). Other speakers with viewpoints more aligned with
22 Commissioner Burns, such as the rooftop solar industry that reportedly has spent heavily on
23 Corporation Commission elections,⁵ are not and would not be subject to any disclosure
24 requirement. In fact, the Companies would be the only corporations in Arizona subject to this
25 disclosure mandate. Such selective regulation flatly violates the First Amendment. "[T]he First
26 Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too,
27 are restrictions distinguishing among different speakers, allowing speech by some but not

28 ⁵ See, e.g., Howard Fischer, *Solar Interests Pour Money Into Corp Comm Race*, Capitol Media Services, Aug. 29, 2016.

1 others.” *Citizens United*, 558 U.S. at 340 (internal citations, quotation marks omitted); *see also*
2 *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995)
3 (“Discrimination against speech because of its message is presumed to be unconstitutional....
4 The government must abstain from regulating speech when the specific motivating ideology or
5 the opinion or perspective of the speaker is the rationale for the restriction.”).

6 *Second*, the subpoenas are intended to accomplish through different means what
7 Commissioner Burns failed to achieve when the Companies refused to refrain “voluntarily” from
8 future political expenditures. Commissioner Burns stated that he was “broaden[ing]” his inquiry
9 and “requir[ing]” cooperation because APS had refused to accede to his demands. Complaint ¶¶
10 15-17 & Ex.5. That kind of retaliation is plainly unlawful. *See Wilkie v. Robbins*, 551 U.S. 537,
11 555 (2007) (noting the “longstanding recognition that the Government may not retaliate for
12 exercising First Amendment speech rights”); *see also White v. Lee*, 227 F.3d 1214, 1228 (9th
13 Cir. 2000) (“[G]overnment officials violate [the First Amendment] when their acts would chill
14 or silence a person of ordinary firmness . . .”).

15 **2. The Subpoenas Are Not Justified By Any Important Government Interest.**

16 Nor can the subpoenas be justified under the case law concerning generally applicable
17 disclosure requirements. In the first place, as just described, these subpoenas impose generally
18 applicable obligations. They are selectively targeted at two companies. But in any event, they
19 also fail the “exacting scrutiny” courts apply to generally applicable disclosure requirements.
20 *Citizens United*, 558 U.S. at 366-67. First, the requirement must serve a “sufficiently important
21 government interest,” *id.*, that “reflect[s] the seriousness of the actual burden on First
22 Amendment rights.” *Davis*, 554 U.S. at 744 (emphasis added); *John Doe #1 v. Reed*, 561 U.S.
23 186, 196 (2010). Second, that interest must have a “substantial relation” to the disclosure
24 requirement. *Citizens United*, 558 U.S. at 366-67. The subpoenas cannot survive such scrutiny.

25 The subpoenas are not justified by any important governmental interest. As an initial
26 matter, the subpoenas cannot be justified by the Commission’s interests in protecting ratepayers
27 because, as discussed above, they are massively overbroad with respect to that interest. *See Ariz.*
28 *Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1010-11 (9th Cir. 2003)

1 (invalidating statute burdening political speech where fit between statute and purported purpose
2 "is poor at best"); *Am. Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 1000 (9th Cir.
3 2004) (invalidating law requiring certain groups to reveal names of financial sponsors as
4 overbroad). Requiring the Companics to produce information irrelevant to customer rates bears
5 no "substantial relation" to the Commission's interest in regulating rates. *Citizens United*, 558
6 U.S. at 366-67.

7 Nor can the subpoenas be justified in order to prevent the "overparticipati[on]" of utilities
8 in the electoral process, as Commissioner Burns' has described his goal. See Complaint ¶ 22 &
9 Ex. 7. "[I]t is our law and our tradition that more speech, not less, is the governing rule." *Citizens*
10 *United*, 558 U.S. at 361. The Constitution "entrust[s] the people to judge what is true and what
11 is false." *Id.* at 354-55. Commissioner Burns may disagree, but that is the law.

12 At times, Commissioner Burns has also suggested that compelled disclosure will prevent
13 the appearance of corruption. To be clear, Commissioner Burns does not allege any actual quid
14 pro quo corruption. Instead, he claims to prevent an appearance of undue influence that might
15 arise in the future. See Complaint Ex. 9 at 20 ("I'm not telling anybody that you're unduly
16 influenced. I'm concerned about the future of who comes to run for the Corporation Commission
17 and how they are perceiving these large sums of money being pumped into these campaigns.").

18 However, the U.S. Supreme Court held that independent spending poses no risk of "*quid*
19 *pro quo* corruption." *Citizens United*, 558 U.S. at 359. The Court made crystal clear that
20 "independent expenditures, including those made by corporations, *do not give rise to corruption*
21 *or the appearance of corruption.*" *Id.* at 357 (emphasis added). In fact, "there is only scant
22 evidence that independent expenditures even ingratiate.... Ingratiation and access, in any event,
23 are not corruption." *Id.* at 360. The Court explained that "[t]he absence of prearrangement and
24 coordination ... with the candidate or his agent ... alleviates the danger that expenditures will be
25 given as a *quid pro quo* for improper commitments from the candidate." *Id.* at 357. The Court
26 further explained that such expenditures are nothing more than "political speech presented to the
27 electorate" in attempt to "persuade voters." *Id.* at 360. The Supreme Court's holding applies
28 with even greater force to anonymous contributions received by independent 501(c)(4) social

1 welfare organizations, which then decide how to use the funds they receive in support of those
2 organizations' own advocacy goals and agendas. Such contributions are two steps removed from
3 any candidate and, under the Supreme Court's reasoning, pose no risk of corruption.

4 **C. Commissioner Burns Lacks the Authority to Issue the Subpoenas.**

5 Commissioner Burns lacks authority to issue the subpoenas. *First*, a subpoena aimed at
6 the disclosure of political expenditures is not "within [the Commission's] scope of authority."
7 *Carrington*, 199 Ariz. At 305 ¶ 9; *see also People ex rel. Babbitt v. Herndon*, 119 Ariz. 454, 456
8 (1978) ("[A] party may resist an administrative subpoena on any appropriate grounds[,] . . .
9 includ[ing] that the inquiry is not within the agency's scope of authority."). The Commission
10 has no legitimate regulatory interest in a public service corporation's charitable and political
11 contributions and lobbying expenses, so long as it is not seeking to treat those expenditures as
12 recoverable operating expenses. And the Commission has no legitimate interest at all in such
13 expenses by an unregulated corporation, such as Pinnacle West. Indeed, Commissioner Burns
14 himself acknowledged that the "laws governing campaign finance are not within the
15 Commission's purview." Complaint ¶ 9 & Ex. 2.

16 The Arizona Constitution delegated campaign finance regulations to the legislature, not
17 to the Corporation Commission. *See* Ariz. Const. art. 7, § 16.⁶ Regulation of campaign finance
18 is governed by the "comprehensive statutory scheme" set forth in A.R.S. §§ 16-901 to 16-961,
19 *Pacion v. Thomas*, 225 Ariz. 168, 169 ¶ 6 (2010), and is administered by the Secretary of State
20 and the Citizens Clean Elections Commission. Violations are punished by the Citizens Clean
21 Elections Commission, Attorney General or county, city, or town attorney. A.R.S. §§ 16-924;
22 956(A)(7). The Commission has no authority to enforce the campaign finance statutes.

23 Under Arizona law, corporations need not disclose contributions to groups that may make
24 independent political expenditures. And groups that make independent expenditures are only
25 required to disclose their donors if the groups qualify as "political committees" under Arizona
26 law. A.R.S. §§ 16-913, 16-914.02(K), 16-915. Commissioner Burns, like any citizen, is free to
27 advocate for a change in the law; but he may not use the subpoena power to override policy

28 ⁶ The People also have lawmaking power through citizens' initiatives and referenda. Ariz. Const. IV, pt. 1, § 1.

1 decisions that the Constitution assigns to the legislative branch. To hold otherwise would violate
2 the Constitution's separation of powers. *State ex rel. Montgomery v. Mathis*, 231 Ariz. 103, 121
3 ¶ 66 (App. 2012) ("A violation of the separation of powers doctrine occurs when one branch of
4 government usurps another branch's powers or prevents that other branch from exercising its
5 authority."); *Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17 (1966) (the
6 "Corporation Commission's powers do not exceed those to be derived from a strict construction
7 of the Constitution and implementing statutes."); *Tonto Creek Estates Homeowners Ass'n v. Ariz.*
8 *Corp. Comm'n*, 177 Ariz. 49, 55-57 (App. 1993).

9 *Second*, Commissioner Burns lacks the authority to subpoena documents in the absence
10 of any allegation of wrongdoing and disconnected from any Commission-authorized
11 investigation. With respect to APS documents, Commissioner Burns claims authority under
12 A.R.S. 40-241. (That provision applies solely to public service corporations and not to their
13 parents or affiliates.) But A.R.S. 40-241 cannot be read in isolation. It describes the power to
14 "inspect" records (not demand written responses) in the context of a proceeding that the
15 Commission as a whole has authorized under A.R.S. 40-102(C), which states, "Any
16 investigation, inquiry or hearing may be undertaken or held by or before any commissioner
17 designated by the commission for the purpose." (emphasis added). Regarding Pinnacle West
18 documents, Commissioner Burns has cited Article 15 Section 4 of the Arizona Constitution, but
19 that provision likewise does not support him. In *Arizona Corp. Comm'n v. State ex rel. Woods*,
20 171 Ariz. 286 (1992), the Supreme Court considered at length whether the Commission had
21 authority to imposing reporting requirements on the affiliates of public service corporations, and
22 concluded that it did pursuant to its powers under Article 15 Section 3 of the Arizona
23 Constitution, but only insofar as the requirements are "reasonably connected to and necessary for
24 its ... ratemaking power." *Id.* at 294-95. These reporting rules are codified in Ariz. Admin. Code
25 R14-2-801 to -806, and they do not require disclosure of the information sought by
26 Commissioner Burns. It would have been nonsensical for the Supreme Court to engage in an
27 extended analysis of the Commission's limited powers over affiliates under Article 15 Section 3,
28 if the Commission could have simply bypassed those limitations by invoking Article 15 Section

1 4. The implications of Commissioner Burns' position are sweeping: any single Commissioner
2 could decide to mandate the public disclosure of any information, by any corporation doing
3 business in Arizona, for any reason—even when opposed by the remainder of the Commission.
4 The Court should reject such a notion.

5 **D. Compelling Testimony by the Companies' CEO Is Wholly Improper.**

6 Commissioner Burns' subpoenas compound their overbroad requests for written
7 information with a demand to depose the Companies' CEO. That demand is improper not only
8 for the reasons already discussed, but also because the law protects witnesses from undue burden
9 and "annoyance, embarrassment, [or] oppression." Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P.
10 26(c)(1); *Am. Family Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 513 ¶ 21 (App. 2009) (requiring less
11 intrusive means of discovery to avoid harassment). Accordingly, courts have held that
12 depositions of high-ranking company officials are unduly burdensome and unwarranted. *See*,
13 *e.g.*, *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 334 (M.D. Ala. 1991) (the "legal authority is
14 fairly unequivocal" that sharp limits are placed on depositions of high-ranking officials). Efforts
15 to depose high-level executives "create[] a tremendous potential for abuse or harassment." *Apple*
16 *Inc. v. Samsung Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). A party cannot compel
17 testimony from a highly placed executive unless it can show that the executive has "knowledge
18 that is both unique and relevant." *Guan Ming Lin v. Benihana Nat'l Corp.*, No. 10 CIV. 1335,
19 2010 WL 4007282, at *2 (S.D.N.Y. Oct. 5, 2010) (prohibiting deposition of high-ranking
20 executive who had "no special personal knowledge" when others could testify to same topics).

21 Here, Mr. Brandt does not have unique or special knowledge regarding the subpoena's
22 purported purpose. Instead, Commissioner Burns seeks the public spectacle of calling the CEO
23 to the carpet the week before early voting begins. If *any* deposition is allowed, it should be of a
24 lower-level person with relevant knowledge of how APS accounted for its expenses during the
25 2010 and 2015 test years. *See Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) (affirming
26 order prohibiting executive deposition until lower-level employees deposed); *Am. Family Mut.*
27 *Ins Co.*, 222 Ariz. at 513 ¶ 21 (prohibiting potentially harassing discovery until "litigants . . . at
28 least initially pursue less intrusive discovery").

1 **E. Commissioner Burns's Threat to Publicly Disseminate the Information**
2 **Gathered by the Subpoenas Underscores Its Improper Purpose.**

3 Commissioner Burns has declared his intention to make publicly available all the
4 information and testimony he gathers. That flagrantly violates statutory protections of
5 confidential business information. See A.R.S. § 40-204(C) ("No information furnished to the
6 commission by a public service corporation, except matters specifically required to be open to
7 public inspection, shall be open to public inspection or made public"). To be made public, there
8 must be due process: an "order of the commission entered after notice" or an order entered "in
9 the course of a hearing or proceeding." *Id.* There is no basis for Commissioner Burns to
10 unilaterally make confidential information public, and the threat merely underscores the
11 subpoena's improper purpose.

12 **II. AN INJUNCTION IS NEEDED TO PREVENT IRREPARABLE HARM.**

13 Irreparable harm exists where "damages are inadequate to address the full harm suffered."
14 *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 65 ¶ 11 (App.
15 2011). The U.S. Supreme Court has long recognized that the "loss of First Amendment freedoms,
16 for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*,
17 427 U.S. 347, 373 (1976). Here, no amount of damages could remedy the forced public
18 disclosure of material protected by the First Amendment.

19 First, once the information is revealed, it can never again be protected. A court cannot
20 "unring the bell" once the information has been released." *Maness v. Meyers*, 419 U.S. 449, 460
21 (1975); *Mobilisa, Inc. v. Doe*, 217 Ariz. 103, 112 ¶ 26 (App. 2007) ("[A]n unmasked anonymous
22 speaker cannot later obtain relief" if the other party fails to prevail on the merits). "Given this
23 significant consequence, it is even more appropriate to require the court to balance the parties'
24 competing interests before permitting discovery on the identity issue." *Mobilisa*, 217 Ariz. at
25 112 ¶ 26.

26 Second, forced disclosure creates a risk of retribution. The Supreme Court has recognized
27 that such disclosure can "subject [the speaker] to threats, harassment, or reprisals from ...
28 Government officials." *Citizens United*, 558 U.S. at 367. That risk is more than theoretical here:

1 Commissioner Burns already launched a “broadened” investigation into the Companies’ past
2 speech when APS refused to refrain from speech in the upcoming election, and he has described
3 his vote as a “tool” that he will use to punish APS. Complaint ¶¶ 17, 19, Exs. 6,7.

4 Further heightening the irreparable harm of disclosure is Commissioner Burns’ stated
5 intent to publicly release any information received. “It would be difficult—if not impossible—
6 to reverse the harm from those broadcasts” of the Companies’ protected information.
7 *Hollingsworth v. Perry*, 558 U.S. 183, 195 (2010). That is true not only of First Amendment-
8 protected materials, but also of the Companies’ confidential business information that
9 Commissioner Burns threatens to release publicly.

10 **III. THE BALANCE OF HARMS AND PUBLIC INTEREST FAVOR AN** 11 **INJUNCTION.**

12 The balance of harms strongly favors an injunction. In contrast to the Companies,
13 Commissioner Burns will suffer no harm from an injunction: he already has access to the
14 materials APS submitted or will submit in connection with rates set based on 2010 and 2015 test
15 years. Moreover, Commissioner Burns initiated this investigation more than nine months ago.
16 There is no urgent and sudden need for the subpoenas.

17 The public interest likewise favors an injunction. As described above, Arizona has not
18 generally required disclosure of donors to 501(c)(4) public welfare organizations because of the
19 public interest in protecting the First Amendment freedom of association. As the State of Arizona
20 recently told the U.S. Supreme Court, “the First Amendment harm *is inherent* in the disclosure
21 [of donations] to the government official” because it encourages such “government officials ...
22 to single out their political opponent for retribution.” Br. of Arizona et al. as Amicus Curiae in
23 Support of Petitioner at 2, *Center for Competitive Politics v. Harris*, No. 15-152 (U.S. Sept. 2,
24 2015). And the Commission as a whole has refused to endorse Commissioner Burns’ “battle
25 with APS.” Complaint ¶¶ 20, 25, & Ex. 8. The public interest weighs on the side of protecting
26 First Amendment rights.

27 **CONCLUSION**


28 An Order to Show Cause should be issued and a preliminary injunction granted.

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DATED this 9th day of September, 2016.

OSBORN MALEDON, P.A.

By /s/


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EXHIBIT N

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APS Reaches Settlement In Rate Case, Rolls Back Mandatory Demand Charge Proposal

By [Will Stone](#)Published: Wednesday, March 1, 2017 - 1:15pm
Updated: Thursday, March 2, 2017 - 2:41pm[Like 754](#)[Tweet](#)

Arizona's largest utility has agreed not to push forward with some of the most controversial proposals to change how customers are billed.

On Wednesday, Arizona Public Service and 30 other stakeholders announced a settlement in its pending rate case at the Arizona Corporation Commission.

APS was poised to be the first utility in the country to move most of its residential customers onto a "demand charge" — that would be a new fee based on the one hour of the month during peak when a household uses the most power. The utility had argued the charge more accurately reflects the cost of supplying power during the evenings when demand spikes. But the new charge had been broadly criticized by consumer and solar advocates who said it was unpredictable and hard for the average customer to understand.

"The settlement in this case soundly rejects the idea that mandatory demand charges are the right policy for all residential customers," Vote Solar's Briana Kobor said. "I think that should set national precedent."

Instead, most customers will go on to a time-of-use rate that increases the price of electricity during peak hours, but is not based on demand during a short window of time. Several optional demand rates will also be available.

Under the agreement, rates for APS customers will not go up as much, either. The utility had previously requested a rate hike of about \$11 per month for the average customer, but instead it will only ask for about a \$6 increase.

"A settlement is a negotiation and a compromise between all parties and ultimately the result is very beneficial for the customers," said Stefanie Layton, APS director of revenue requirements. "We were able to find common ground and that's significant."

The settlement also addresses one of the most contentious issues facing Arizona's energy market — rooftop solar.

Under the agreement, APS will grandfather existing rooftop solar customers at the same rates, including for net-metering,

<http://kjzz.org/content/442380/aps-reaches-settlement-rate-case-rolls-back-mandatory-demand-charge-proposal>

which currently reimburses customers at retail rates for the excess power they send to the grid. Once the proposed rates take effect later this year, new solar customers will be reimbursed starting at 12.9 cents/kilowatt-hour for 10 years. For each successive year, that number will step down gradually for new solar systems.

In recent years, the solar industry and utilities in Arizona have been battling over how to charge solar customers hooked up to the grid. APS contends rooftop solar customers are shifting costs onto all its other ratepayers. "We didn't eliminate the cost shift in this settlement, but we did cut it in half, which is significant progress and a gradual transition to more sustainable rate structures in the future," Layton said.

The agreement could also represent a shift in the tone of these policy debates.

An APS statement says that a "separate agreement" was reached by the utility, industry representatives and solar advocates to "stand by the settlement agreement" and "refrain from seeking to undermine it through ballot initiatives, legislation or advocacy at the [Arizona's Corporation Commission]."

That leaves out elections for Arizona Corporation Commission, which have become ground zero for the fight over rooftop solar. Commissioner Bob Burns has even subpoenaed APS and its parent company Pinnacle West for campaign finance records tied to alleged dark money spending in the 2014 cycle. Millions were spent by both industries in the 2016 race for the commission, as well.

Overall, reaction from the solar industry was cautiously optimistic about the agreement.

The Solar Energy Industries Association Vice President of State Affairs Sean Gallagher said the "solar industry didn't get everything it had hoped for," but that they "hope an era of collaboration will take hold in Arizona."

"Sunrun will stand by the terms of the settlement agreement and plans to provide Arizonans with access to rooftop solar, even though the settlement does not fully recognize the multitude of benefits that rooftop solar brings to all Arizonans," Sunrun's Chief Policy Officer Anne Hoskins said in a statement.

The settlement still needs approval from the Arizona Corporation Commission.



Morning Edition

Wednesday at 5 a.m.

**morning
edition**
9-11

EXHIBIT O

ARIZONA CORPORATION COMMISSION

APRIL 10, 2017 THROUGH APRIL 21, 2017

THIS WILL SERVE AS NOTICE THAT ONE OR MORE OF THE COMMISSIONERS MAY ATTEND ANY HEARING FOR THE PURPOSE OF HEARING EVIDENCE AND ASKING QUESTIONS. THERE WILL BE NO VOTE BY THE COMMISSIONERS UNLESS AN ADDITIONAL NOTICE IS APPROPRIATELY POSTED.

MON. APR. 10
10:00 a.m.

Phoenix – Utilities – H.R. #1 – Paternoster
W-01445A-16-0437 – Arizona Water Company
(CC&N Extension)

6:00 p.m.

Yuma – Utilities – Public Comments – Commissioners
E-01345A-16-0036, et al. – Arizona Public Service Company
(Rates)

Location: The Historic Yuma Theatre
254 South Main Street
Yuma, AZ 85364

TUE. APR. 11
10:00 a.m.

Phoenix – Utilities – H.R. #1 – Harpring
W-01557A-16-0471 – Lake Verde Water Company, Inc.
(CC&N Reinstatement)

WED. APR. 12
10:00 a.m.

Phoenix – Safety – H.R. #1 – Stern
RR-03639A-17-0020 – Union Pacific Railroad Company
(Upgrade Crossing)

10:00 a.m.

Phoenix – Utilities – H.R. #2 – Hesla
W-01084A-16-0454 – William P. Farr d/b/a/ Salome Water Company
(Emergency Rates)(Procedural Conference)

THUR APR. 13
10:00 a.m.

Tucson – Utilities – Room 222 – Martin
WS-04245A-16-0392 – Red Rock Utilities, LLC
(CC&N Extension)

FRI. APR. 14
10:00 a.m.

Phoenix – Utilities – H.R. #1 – Hesla
WS-02156A-16-0201 – Rio Verde Utilities, Inc.
(Rates)

MON. APR. 17

NO HEARINGS

TUE. APR. 18

NO HEARINGS

WED. APR. 19

NO HEARINGS

THUR APR. 20
10:00 a.m.

Phoenix – Utilities – H.R. #1 – Paternoster
E-01749A-16-0337 – Graham County Electric Cooperative, Inc.
(Sale of Assets)

2:00 p.m.

Phoenix – Utilities – H.R. #1 – Jibilian
E-01345A-16-0036, et al. – Arizona Public Service Company
(Rates) (Pre-Hearing Conference)

FRI. APR. 21

NO HEARINGS

HEARINGS ARE SUBJECT TO POSSIBLE CANCELLATION WITHOUT FURTHER NOTICE TO NON-PARTIES. INTERESTED PARTIES SHOULD CHECK WITH THE HEARING DIVISION (602-542-4250) PRIOR TO ATTENDING ANY MATTER SCHEDULED.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn Buck, ADA Coordinator, voice phone number 602-542-3931; email KCannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

EXHIBIT P



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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DOUG LITTLE – Chairman

JUL 22 2016

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BOB BURNS

TOM FORESE

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2016 JUL 22 PM 2 34

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE SCHEDULES
DESIGNED TO DEVELOP SUCH RETURN

DOCKET NO. E-01345A-16-0036

RATE CASE
PROCEDURAL ORDER

BY THE COMMISSION:

On June 1, 2016, Arizona Public Service Company (“APS” or “Company”) filed with the Arizona Corporation Commission (“Commission”) the above-captioned Rate Case Application.¹ The application, which is based on a test year ending December 31, 2015, seeks a \$165.9 million net increase in base rates. Among other things, the application also seeks changes in some of its adjustor mechanisms; seeks to establish a new residential and small commercial rate design that moves away from current two-part volumetric rates to three-part demand-based rates; seeks to reduce on-peak time-of-use hours; and seeks to grandfather existing solar customers while modifying net metering arrangements for new solar customers. Pursuant to Commission Decision No. 75047 (April 30, 2015), issues related to APS’s proposed Automated Meter Opt-Out Service Schedule will also be addressed in the proceeding on the application.

Parties who have previously been granted intervention in this docket are Richard Gayer, Patricia Ferré, Warren Woodward, IO Data Centers, LLC (“IO”), Freeport Minerals Corporation (“Freeport”), Arizonans for Electric Choice and Competition (“AECC”), Sun City Home Owners Association (“Sun City HOA”), Western Resource Advocates (“WRA”), and Arizona Investment Council (“AIC”).

On June 14, 2016, APS filed a Notice of Errata.

¹ On January 29, 2016, APS filed its Notice of Intent to File a Rate Case Application and Request to Open Docket.

1 On June 14, 2016, Arizona Utility Ratepayer Alliance ("AURA") filed a Motion for Leave to
2 Intervene and Consent to Email Service.

3 On June 15, 2016, Property Owners and Residents Association, Sun City West ("PORA") filed
4 an Application to Intervene, signed by Al Gervenack and Rob Robbins. Attached to the intervention
5 request was a copy of a May 16, 2016 Resolution of the PORA Board of Directors appointing Mr.
6 Gervenack, PORA Director, as its lay representative in this docket, and Mr. Robbins, PORA President,
7 as its lay representative in the event Mr. Gervenack is unavailable to actively participate in this
8 proceeding. PORA also filed a Consent to Email Service.

9 On June 16, 2016, Arizona Solar Energy Industries Association ("AriSEIA") filed its
10 Application to Intervene. The filing indicates that on May 10, 2016, the Board of Directors of AriSEIA
11 authorized Mr. Tom Harris, its Chairman, to act on its behalf in this proceeding. AriSEIA also filed a
12 Consent to Email Service, but has not as of this date sent a verifying email from its designated email
13 address for this docket.

14 On June 16, 2016, Arizona School Boards Association ("ASBA") and Arizona Association of
15 School Business Officials ("AASBO") (collectively "ASBA/AASBO") jointly filed a Motion for
16 Leave to Intervene.

17 On June 17, 2016, Sun City HOA filed a Clarification.

18 On June 17, 2016, Cynthia Zwick in her individual capacity and Arizona Community Action
19 Association ("ACAA") jointly filed a Motion for Leave to Intervene. The joint intervention request
20 states that Ms. Zwick is authorized to represent ACAA in this proceeding. ACAA also filed a Consent
21 to Email Service, but has not as of this date sent a verifying email from its designated email address
22 for this docket.

23 On June 17, 2016, APS filed its Opposition to AURA's Motion for Leave to Intervene.

24 On June 22, 2016, the Residential Utility Consumer Office ("RUCO") filed a Motion for Leave
25 to Intervene.

26 On June 22, 2016, APS docketed copies of its lead/lag study and excerpts from the Handy-
27 Whitman Bulletin No. 182 used to calculate its proposed reconstruction cost new less depreciation
28 ("RCND") rate base.

1 On June 22, 2016, Southwest Energy Efficiency Project ("SWEEP") filed a Motion for Leave
2 to Intervene and a Consent to Email Service.

3 On June 23, 2016, APS filed its Second Notice of Errata.

4 On June 24, 2016, AURA filed its Response in Support of Motion to Intervene.

5 On June 24, 2016, APS filed a copy of the notice it provided to parties of record of the Rate
6 Case Technical Conferences scheduled for July 20, 2016, August 23, 2016, September 29, 2016, and
7 October 26, 2016.

8 On June 27, 2016, Vote Solar filed a Motion for Leave to Intervene and a Consent to Email
9 Service.

10 On June 28, 2016, APS filed its Reply in Opposition to Arizona Utility Ratepayer Alliance's
11 Motion to Intervene.

12 On June 29, 2016, the Electrical District Number Eight and McMullen Valley Water
13 Conservation & Drainage District (collectively, "ED8/McMullen") jointly filed a Motion for Leave to
14 Intervene. ED8/McMullen also filed a Consent to Email Service, but has not as of this date sent a
15 verifying email from its designated email address for this docket.

16 On July 1, 2016, the Commission's Utilities Division ("Staff") issued a Letter of Sufficiency
17 pursuant to Arizona Administrative Code ("A.A.C.") R14-2-103, classifying APS as a Class A utility.

18 On July 1, 2016, AURA filed a Motion to Strike.

19 On July 5, 2016, The Kroger Co. ("Kroger") filed a Motion for Leave to Intervene and a
20 Consent to Email Service.

21 On July 5, 2016, pursuant to Arizona Supreme Court Rule 39(a), John William Moore, Jr., filed
22 with the Commission a Motion to Associate Counsel *Pro Hac Vice* to associate Kurt J. Boehm and
23 Jody Kyler Cohn as counsel for Kroger in this matter.

24 On July 5, 2016, APS filed its Reply in Opposition to Arizona Utility Ratepayer Alliance's
25 Motion to Strike.

26 July 6, 2016, AURA filed its Response to APS's Reply in Opposition to Arizona Utility
27 Ratepayer Alliance's Motion to Strike.

28 On July 7, 2016, Tucson Electric Power Company ("TEP") filed a Motion for Leave to

1 Intervene. TEP also filed a Consent to Email Service, but has not as of this date sent a verifying email
2 from its designated email address for this docket.

3 On July 8, 2016, Pima County filed a Motion for Leave to Intervene. Pima County also filed
4 a Consent to Email Service, but has not as of this date sent a verifying email from its designated email
5 address for this docket.

6 On July 11, 2016, Staff filed a Request for Procedural Schedule.

7 On July 12, 2016, Solar Energy Industries Association ("SEIA") filed a Motion for Leave to
8 Intervene. SEIA also filed a Consent to Email Service, but has not as of this date sent a verifying email
9 from its designated email address for this docket.

10 On July 15, 2016, the Energy Freedom Coalition of America ("EFCA") filed a Motion to
11 Intervene.

12 On July 18, 2016 Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively, "Walmart") filed
13 an Application for Leave to Intervene and a Consent to Email Service.

14 On July 19, 2016, Staff filed a Motion to Consolidate, requesting that this docket be
15 consolidated with Docket No. E-01345A-16-0123.

16 Numerous public comments have been filed in this docket.

17 Intervention Requests

18 No party has objected to the Motions to Intervene filed by PORA, AriSEIA, ASBA/AASBO,
19 Cynthia Zwick, ACAA, SWEEP, RUCO, Vote Solar, ED8/McMullen, Kroger, TEP, Pima County, and
20 SEIA.

21 Accordingly, PORA, AriSEIA, ASBA/AASBO, Cynthia Zwick, ACAA, SWEEP, RUCO, Vote
22 Solar, ED8/McMullen, Kroger, TEP, Pima County, and SEIA should be granted intervention.

23 AURA's Intervention Request

24 APS has contested AURA's intervention request.

25 In its Motion to Intervene, AURA states that it is a nonpolitical, non-partisan organization
26 founded in 2015 "to advise and represent utility ratepayers on vital issues affecting their pocketbook,"
27 and to advocate "on behalf of everyday Arizonans to ensure that utilities act responsibly with affordable
28 rates, subject to transparent regulation, while providing sustainable utility services." AURA asserts

1 that it is independent from any government entity, and contends that it is unique in its commitment to
2 all Arizona ratepayers and its advocacy for effective and efficient utility oversight. AURA states that
3 while it does not advocate any particular alternative energy production or efficiency measures, it
4 believes that "all such prudent measures should be part of Arizona's energy portfolio, without undue
5 ratepayer subsidies." AURA indicates that it is particularly interested in APS's rate design proposals
6 and proposals to modify its net metering tariff, but that it wishes to reserve the right to take positions
7 on any other issues in this case. AURA contends that no other party can adequately represent AURA's
8 interests.

9 APS states that AURA is the Arizona registered trade name for Quinn & Associates, LLC,
10 whose only members are Mr. Patrick Quinn, a registered lobbyist, and his wife.² APS states that Mr.
11 Quinn has described Quinn & Associates as a business and political consulting firm, and that Mr. Quinn
12 has testified that AURA is funded by the Energy Foundation, whose mission, according to its website,
13 is "to promote the transition to a sustainable energy future by advancing energy efficiency and
14 renewable energy." APS contends that because AURA is a lobbying firm, it lacks a direct and
15 substantial interest in this docket. APS posits that AURA's participation "is both redundant and almost
16 certain to unduly expand the scope of the docket." APS contends that at a minimum, AURA should be
17 grouped with other intervenors having substantially like interests and positions into a class pursuant to
18 A.A.C. R14-2-105(C). A.A.C. R14-2-105(C) addresses the declaration of a class of "interested
19 persons" for purposes of hearing.

20 A.A.C. R14-3-105 allows parties who are directly and substantially affected by a proceeding to
21 intervene. AURA has stated an interest in the issue of alternative energy production without undue
22 ratepayer subsidies, and in the issue of the effects of a rate design with demand charges, both of which
23 are implicated by APS's rate case. Rule 105 does not require that a party be a customer, or do business
24 with the utility, in order to have an interest in the proceeding sufficient to intervene. AURA's business
25 form does not preclude intervention, nor does the fact that other parties to a case may have interests
26 similar to those expressed by AURA. It has not been demonstrated at this time that AURA's
27

28 ² The members of Quinn & Associates, LLC are Patrick J. Quinn and Marcia M. Quinn.

1 participation will unduly broaden the issues in this docket, or that there is a need to declare a class, or
2 classes, of "interested persons" for this docket.

3 Accordingly, AURA should be granted intervention.

4 Consents to Email Service

5 **The Commission is appreciative of parties' requests to receive service by email. The**
6 **Commission will soon be implementing a procedure whereby all filings made by a Commissioner,**
7 **the Commission's Executive Director, or a Commission Division will be served upon parties who**
8 **have consented to email service via an email containing either an electronic copy of the filing or**
9 **a link to access the filing online. Parties who do not consent to email service may not be able to**
10 **receive some documents, such as Amendments to Open Meeting Agenda items.**

11 Representatives from AURA, PORA, SWEEP, and Vote Solar have opted to receive service of
12 all filings in this docket, including all filings by parties and all Procedural Orders and Recommended
13 Opinions and Orders/Recommended Orders issued by the Commission's Hearing Division, via their
14 designated email addresses rather than via U.S. Mail. AURA, PORA, SWEEP, and Vote Solar have
15 each exercised this option by docketing hard copies of their Consents to Email Service, and by sending
16 emails containing their names and the docket number for this matter to
17 HearingDivisionServicebyEmail@azcc.gov from their designated email addresses. The Hearing
18 Division has verified the validity of their designated email addresses, which now appear on the service
19 list for this matter in addition to their addresses for U.S. Mail. In addition, courtesy email addresses
20 appear for delivery of courtesy emails to other individuals associated with those parties.

21 The Consents to Email Service filed by AURA, PORA, SWEEP, and Vote Solar should be
22 granted.

23 Several parties granted intervention by this Procedural Order have requested to receive service
24 by email, but have not as of this date sent an email containing the party's name and the docket number
25 for this matter to HearingDivisionServicebyEmail@azcc.gov from the party's designated email
26 address.³ Once those parties have accomplished this necessary step so that the Hearing Division may

27 _____
28 ³ As noted in the procedural history above, these parties are AriSEIA, ACAA, ED8/McMullen, Kroger, TEP, Pima County,
and SEIA.

1 verify the party's designated email address for accomplishing service, the party's request will be
2 approved by a subsequent Procedural Order. In addition to the party's designated email address for
3 accomplishing service, additional courtesy email addresses for the party will also be added to the
4 service list at that time.

5 Lay Representatives

6 Pursuant to Arizona Supreme Court Rule 31(d)(28), a non-profit organization may be
7 represented before the Commission by a corporate officer, employee, or a member who is not an active
8 member of the state bar, if (1) the non-profit organization has specifically authorized the officer,
9 employee, or member to represent it in the particular matter; (2) such representation is not the person's
10 primary duty to the non-profit organization, but is secondary or incidental to such person's duties
11 relating to the management or operation of the non-profit organization; and (3) the person is not
12 receiving separate or additional compensation (other than reimbursement for costs) for such
13 representation. Arizona Supreme Court Rule 31(d)(28) further states that the Commission or presiding
14 officer may require counsel in lieu of lay representation whenever it is determined that lay
15 representation is interfering with the orderly progress of the proceeding, imposing undue burdens on
16 the other parties, or causing harm to the parties represented.

17 Mr. Al Gervenack and Mr. Rob Robbins should be authorized to represent PORA as lay
18 representatives in this proceeding.

19 Mr. Tom Harris should be authorized to represent AriSEIA as lay representative in this
20 proceeding.

21 Ms. Cynthia Zwick should be authorized to represent ACAA as lay representative in this
22 proceeding.

23 Requests to Participate *Pro Hac Vice*

24 The Motion filed by John William Moore, Jr. requesting authority to associate Kurt J. Boehm
25 and Jody Kyler Cohn *pro hac vice* as counsel for Kroger in this matter lists Mr. Moore as the designated
26 member of the Arizona State Bar with whom communication may be made, and upon whom papers
27 should be served. Attached to the filing is a copy of the verified Application for Appearance *Pro Hac*
28 *Vice* filed with the State Bar of Arizona for Mr. Boehm and Ms. Cohn; a copy of the certificates of

1 good standing from the jurisdictions in which they have been admitted to practice law; and copies of
2 the Notices of Receipt of Complete Application from the State Bar of Arizona.

3 In the discretion of the Commission, Mr. Boehm and Ms. Cohn should be permitted to appear
4 and participate *pro hac vice* in this matter on behalf of Kroger.

5 Proposed Procedural Schedule

6 Staff requests that the following procedural schedule be adopted for this case:

7 Staff and Intervenor Direct Testimony (except rate design)	Wednesday, December 21, 2016
8 Staff and Intervenor Direct Testimony (rate design)	Friday, January 27, 2017
9 APS Rebuttal Testimony	Friday, February 17, 2017
10 Staff and Intervenor Surrebuttal Testimony	Friday, March 10, 2017
11 APS Rejoinder Testimony	Friday, March 17, 2017
12 Prehearing Conference	Monday, March 20, 2017
13 Proposed Hearing Commencement Date	Wednesday, March 22, 2017

14 Staff states that APS and RUCO have indicated to Staff that they are in agreement with Staff's
15 proposed schedule. Staff requests that a procedural conference be scheduled, if needed, to discuss the
16 schedule and other procedural matters the parties may have concerning the processing of this case.

17 The procedural schedule for processing this case proposed by Staff appears to be balanced and
18 fair and should provide sufficient time to conclude the case within 12 months of the sufficiency finding.
19 It will therefore be adopted.

20 Pending Intervention Requests

21 The intervention requests filed by EFCA and Wal-Mart will not be ruled upon in this Procedural
22 Order, but will be considered after sufficient time has been allowed for the filing of any responses.

23 Motion to Consolidate

24 The Motion to Consolidate filed by Staff will not be ruled upon in this Procedural Order, but
25 will be considered after sufficient time has been allowed for the filing of any responses.

26 IT IS THEREFORE ORDERED that the **hearing in this matter shall commence on March**
27 **22, 2017, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room
28 No. 1, Phoenix, Arizona 85007.

1 IT IS FURTHER ORDERED that a **pre-hearing conference shall be held on March 20, 2017,**
2 **at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1,
3 Phoenix, Arizona 85007.

4 IT IS FURTHER ORDERED that the **direct testimony** and associated exhibits to be presented
5 at hearing on behalf of **Staff and intervenors on issues other than rate design** shall be reduced to
6 writing and filed on or before **December 21, 2016.**

7 IT IS FURTHER ORDERED that the **direct testimony** and associated exhibits to be presented
8 at hearing **on behalf of Staff and intervenors on rate design issues** shall be reduced to writing and
9 filed on or before **January 27, 2017.**

10 IT IS FURTHER ORDERED that any **rebuttal testimony** and associated exhibits to be
11 presented at hearing by **APS** shall be reduced to writing and filed on or before **February 17, 2017.**

12 IT IS FURTHER ORDERED that any **surrebuttal testimony** and associated exhibits to be
13 presented by **Staff and intervenors** shall be reduced to writing and filed on or before **March 10, 2017.**

14 IT IS FURTHER ORDERED that any **rejoinder testimony** and associated exhibits to be
15 presented at hearing by **APS** shall be reduced to writing and filed on or before **March 17, 2017.**

16 IT IS FURTHER ORDERED that **all filings shall be made by 4:00 p.m. on the date the filing**
17 **is due.**

18 IT IS FURTHER ORDERED that any **objections to pre-filed testimony or exhibits shall be**
19 **made before or at the March 20, 2017 pre-hearing conference.**

20 IT IS FURTHER ORDERED that all testimony filed shall include a **table of contents** which
21 lists the issues discussed.

22 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to pre-
23 filed testimony, with the exception of rejoinder testimony, shall be reduced to writing and filed no later
24 than **five calendar days before the witness is scheduled to testify.**

25 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the pre-
26 filed testimony of each of their witnesses and **shall file each summary at least two working days**
27 **before the witness is scheduled to testify.**
28

1 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
2 except that **all motions to intervene must be filed on or before November 10, 2017.**

3 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
4 regulations of the Commission, except that until **December 21, 2010**, any objection to discovery
5 requests shall be made within 7 calendar days of receipt,⁴ and responses to discovery requests shall be
6 made within 10 calendar days of receipt. Thereafter, objections to discovery requests shall be made
7 within 5 calendar days, and responses shall be made within 7 calendar days. The response time may
8 be extended by mutual agreement of the parties involved if the request requires an extensive
9 compilation effort.

10 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a receiving
11 party requests service to be made electronically, and the sending party has the technical capability to
12 provide service electronically, service to that party shall be made electronically.

13 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
14 discovery, any party seeking resolution of a discovery dispute may telephonically contact the
15 Commission's Hearing Division to request a date for a procedural conference to resolve the discovery
16 dispute; that upon such a request, a procedural conference will be convened as soon as practicable; and
17 that the party making such a request shall forthwith contact all other parties to advise them of the date
18 and time of the procedural conference and shall at the procedural conference provide a statement
19 confirming that the other parties were contacted.⁵

20 IT IS FURTHER ORDERED that any motions which are filed in this matter and which are not
21 ruled upon by the Commission within 20 calendar days of the filing date of the motion shall be deemed
22 denied.

23 IT IS FURTHER ORDERED that any responses to motions shall be filed within five calendar
24 days of the filing date of the motion.

25
26
27 ⁴ The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. Arizona
time will be considered as received the next business day.

28 ⁵ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before
seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that any replies shall be filed within five calendar days of the
2 filing date of the response.

3 IT IS FURTHER ORDERED that APS shall provide public notice of the hearing in this matter,
4 in the following form and style with the heading in no less than 24-point bold type and the body in no
5 less than 10-point regular type:

6 **PUBLIC NOTICE OF HEARING**
7 **ON ARIZONA PUBLIC SERVICE COMPANY'S APPLICATION**
8 **FOR A PERMANENT RATE INCREASE**
9 **DOCKET NO. E-01345A-16-0036**

10 **Summary**

11 On June 1, 2016, Arizona Public Service Company ("APS" or "Company") filed an
12 application with the Arizona Corporation Commission ("Commission") for a permanent
13 base rate increase. The application seeks a \$165.9 million net increase in base rates.
14 Among other things, the application also seeks changes in some of its adjustor
15 mechanisms; seeks to establish a new residential and small commercial rate design that
16 moves away from current two-part volumetric rates to three-part demand-based rates;
17 seeks to reduce on-peak time-of-use hours; and seeks to grandfather existing solar
18 customers while modifying net metering arrangements for new solar customers.
19 Pursuant to Commission Decision No. 75047 (April 30, 2015), issues related to APS's
20 proposed Automated Meter Opt-Out Service Schedule will be addressed in the rate case
21 proceeding.

22 The requested gross base rate increase is the sum of three parts: (1) a non-fuel increase
23 of \$227.6 million; (2) the revenue-neutral transfer into base rates of \$276.6 million
24 currently being recovered through adjustor mechanisms; and (3) a decrease in base fuel
25 costs of (\$61.7 million). The net percentage impact of the Company's request on
26 customer bills will be an increase of approximately 5.74% on average. **The actual
27 percentage rate increase for individual customers that would result from the
28 application will vary depending upon the type and quantity of service provided.**

29 **THE COMMISSION'S UTILITIES DIVISION ("STAFF") IS IN THE PROCESS
30 OF REVIEWING AND ANALYZING THE APPLICATION. NEITHER Staff
31 NOR ANY INTERVENOR HAS YET MADE ANY RECOMMENDATION
32 REGARDING APS'S REQUEST. THE COMMISSION IS NOT BOUND BY
33 THE PROPOSALS MADE BY APS, STAFF, OR ANY INTERVENORS. THE
34 COMMISSION WILL DETERMINE THE APPROPRIATE RATEMAKING
35 TREATMENT OF THE REVENUES AND EXPENSES RELATED TO APS'S
36 APPLICATION BASED ON THE EVIDENCE PRESENTED IN THIS
37 PROCEEDING. THE FINAL RATES APPROVED BY THE COMMISSION
38 MAY BE HIGHER, LOWER, OR DIFFERENT THAN THE RATES
39 PROPOSED BY APS OR BY OTHER PARTIES.**

40 If you have any questions concerning how the Application may affect your bill or other
41 substantive questions about the Application, you may contact the Company at:
42 [COMPANY INSERT NAME, ADDRESS, TELEPHONE NUMBER, AND E-
43 MAIL ADDRESS FOR CUSTOMER CONTACTS CONCERNING THE
44 APPLICATION].

How You Can View or Obtain a Copy of the Application

Copies of the Application are available from APS [COMPANY INSERT HOW AND WHERE AVAILABLE]; at the Commission's Docket Control Center at 1200 West Washington Street, Phoenix, Arizona, during regular business hours; and on the Commission website (www.azcc.gov) using the e-Docket function.

Arizona Corporation Commission Public Hearing Information

The Commission will hold a hearing on this matter beginning **March 22, 2017, at 10:00 a.m.**, at the Commission's offices, Hearing Room #1, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

Written public comments may be submitted by mailing a letter referencing **Docket No. E-01345A-16-0036** to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by submitting comments on the Commission's website (www.azcc.gov) using the "Submit a Public Comment for a Utility" function. If you require assistance, you may contact the Consumer Services Section at 602-542-4251 or 1-800-222-7000.

If you do not intervene in this proceeding, you will receive no further notice of the proceedings in this docket. However, all documents filed in this docket are available online (usually within 24 hours after docketing) at the Commission's website (www.azcc.gov) using the e-Docket function. You may choose to subscribe to an RSS feed for this case using the e-Docket function.

About Intervention

The law provides for an open public hearing at which, under appropriate circumstances, interested persons may intervene. An interested person may be granted intervention if the outcome of the case will directly and substantially impact the person, and the person's intervention will not unduly broaden the issues in the case. Intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other parties' witnesses. **Intervention is not required if you want to appear at the hearing and provide public comment on the Application, or if you want to file written comments in the record of the case.**

To request intervention, you must file an **original and 13 hard copies** of a written request to intervene with Docket Control, 1200 West Washington, Phoenix, AZ 85007, **no later than November 10, 2016**. You also **must** serve a copy of the request to intervene on each party of record on the same day that you file the request to intervene with the Commission. **Information about what intervention means, including an explanation of the rights and responsibilities of an intervenor, is available on the Commission's website (www.azcc.gov) using the "Intervention in Utility Cases" link.** The link also includes sample intervention requests.

If you choose to request intervention, your request must contain the following:

1. Your name, address, and telephone number, and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A reference to **Docket No. E-01345A-16-0036**;
3. A short statement explaining:
 - a. Your interest in the proceeding (e.g., a customer of APS, etc.),
 - b. How you will be directly and substantially affected by the outcome of the case, and
 - c. Why your intervention will not unduly broaden the issues in the case;

4. A statement certifying that you have served a copy of the request to intervene on APS or its attorney and all other parties of record in the case; and
5. If you are not represented by an attorney who is an active member of the Arizona State Bar, and you are not representing yourself as an individual, sufficient information and any appropriate documentation to demonstrate compliance with Arizona Supreme Court Rules 31, 38, 39, and 42, as applicable.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before November 10, 2016.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Shaylin Bernal, E-mail SABernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that APS shall **mail** to each of its customers a copy of the above notice as a bill insert beginning with the first available billing cycle and shall cause a copy of such notice to be **published at least twice in a newspaper of general circulation** in the service territory of each affected district, with mailing and publication to be completed no later than **August 31, 2016.**

IT IS FURTHER ORDERED that APS shall file **certification of mailing and publication** as soon as possible after the mailing and publication have been completed, but no later than **October 3, 2016.**

IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and publication of same, notwithstanding the failure of an individual customer to read or receive the notice.

IT IS FURTHER ORDERED that AURA, PORA, AriSEIA, ASBA/AASBO, Cynthia Zwick, ACAA, SWEEP, RUCO, Vote Solar, ED8/McMullen, Kroger, TEP, Pima County, and SEIA are hereby granted intervention.

IT IS FURTHER ORDERED that the requests by AURA, PORA, SWEEP, and Vote Solar to receive service of all filings in this docket, including all filings by parties and all Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the Commission's Hearing Division, via their respective designated email addresses rather than via U.S. Mail, is hereby approved.

IT IS FURTHER ORDERED that Mr. Al Gervenack and Mr. Rob Robbins are authorized to represent PORA in this proceeding as PORA's lay representatives, pursuant to Arizona Supreme Court Rule 31(d)(28).

1 IT IS FURTHER ORDERED that Mr. Tom Harris is authorized to represent AriSEIA in this
2 proceeding as AriSEIA's lay representative, pursuant to Arizona Supreme Court Rule 31(d)(28).

3 IT IS FURTHER ORDERED that Ms. Cynthia Zwick is authorized to represent ACAA in this
4 proceeding as ACAA's lay representative, pursuant to Arizona Supreme Court Rule 31(d)(28).

5 IT IS FURTHER ORDERED that pursuant to Arizona Supreme Court Rule 31(d)(28), the
6 Commission or presiding officer may require counsel in lieu of lay representation if it is determined
7 that lay representation is interfering with the orderly progress of the proceeding, imposing undue
8 burdens on the other parties, or causing harm to the parties represented.

9 IT IS FURTHER ORDERED that Kurt J. Boehm and Jody Kyler Cohn are admitted *pro hac*
10 *vice* in the above-captioned matter.

11 IT IS FURTHER ORDERED that Mr. Boehm's and Ms. Cohn's address for service of papers
12 and other communication is:

13 Kurt J. Boehm
14 Jody Kyler Cohn
15 Boehm, Kurtz & Lowry
16 36 E. Seventh St., Suite 1510
17 Cincinnati, OH 45202

18 IT IS FURTHER ORDERED that the address for service of papers and other communication
19 for the Arizona-licensed attorney designated as local counsel is:

20 John William Moore, Jr.
21 7321 North 16th Street
22 Phoenix, AZ 85020

23 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
25 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
26 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
27 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
28 Law Judge or the Commission.

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized

1 Communications) applies to this proceeding and shall remain in effect until the Commission's Decision
2 in this matter is final and non-appealable.

3 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
4 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

5 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party
6 to this matter may opt to receive service of all filings in this docket, including all filings by parties
7 and all Procedural Orders and Recommended Opinions and Orders/Recommended Orders
8 issued by the Commission's Hearing Division, via email sent to an email address provided by the
9 party rather than via U.S. Mail. To exercise this option, a party shall:

- 10 1. Ensure that the party has a valid and active email address to which the party has
11 regular and reliable access ("designated email address");
- 12 2. Complete a Consent to Email Service using the form available on the
13 Commission's website (www.azcc.gov) or a substantially similar format;
- 14 3. File the original and 13 copies of the Consent to Email Service with the
15 Commission's Docket Control, also providing service to each party to the service
16 list;
- 17 4. Send an email, containing the party's name and the docket number for this matter,
18 to HearingDivisionServicebyEmail@azcc.gov from the designated email address,
19 to allow the Hearing Division to verify the validity of the designated email address;
- 20 5. Understand and agree that service of a filing on the party shall be complete upon
21 the first of the following to occur: (1) the sending, to the designated email address,
22 of an email containing an electronic copy of the filing or a link to access the filing
23 online; or (2) for a filing made by a Commissioner, the Commission's Executive
24 Director, or a Commission Division, the making of the filing with a service
25 certification including coding indicating that an automatic service email for the
26 filing shall be sent to each party whose consent to email service has been approved;
- 27 6. Understand and agree that the party may provide additional email addresses on
28 the Consent to Email Service for individuals to whom the party desires to have

1 service emails sent as a courtesy, but that these courtesy email addresses are not
2 the designated email address and will not be verified; and

- 3 7. Understand and agree that the party will no longer receive service of filings in this
4 matter through First Class U.S. Mail or any other form of hard-copy delivery,
5 unless and until the party withdraws this consent through a filing made in this
6 docket.

7 IT IS FURTHER ORDERED that a party's consent to email service shall not become
8 effective until a Procedural Order is issued approving the use of email service for the party. The
9 Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and
10 the Hearing Division has verified receipt of an email from the party's designated email address.

11 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this
12 matter via email does not change the requirement that all filings with the Commission's Docket
13 Control must be made in hard copy and must include an original and 13 copies.

14 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
15 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
16 hearing.

17 DATED this 22^d day of July, 2016.

18
19 
20 TEENA JIBILIAN
21 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
22
23
24
25
26
27
28

1 Copies of the foregoing mailed/delivered
this 22nd day of July, 2016 to:

2 Thomas A. Loquvam
3 Thomas L. Mumaw
4 Melissa M. Krueger
5 PINNACLE WEST CAPITAL CORPORATION
6 PO BOX 53999, MS 8695
7 Phoenix, AZ 85072
8 Attorneys for Arizona Public Service Company

9 Patricia Ferré
10 P.O. Box 433
11 Payson, AZ 85547

12 Richard Gayer
13 526 W. Wilshire Drive
14 Phoenix, AZ 85003
15 rgayer@cox.net

Consented to Service by Email

16 Warren Woodward
17 55 Ross Circle
18 Sedona, AZ 86336
19 w6345789@yahoo.com

Consented to Service by Email

20 Anthony L. Wanger
21 Alan L. Kierman
22 Brittany L. DeLorenzo
23 IO DATA CENTERS, LLC
24 615 N. 48th St.
25 Phoenix, AZ 85008

26 Patrick J. Black
27 C. Webb Crockett
28 FENNEMORE CRAIG, PC
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Attorneys for Freeport Minerals Corporation and
Arizonans for Electric Choice and Competition
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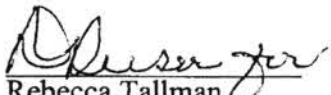
By: 
Rebecca Tallman
Assistant to Teena Jibilian

EXHIBIT Q

Candidate Search

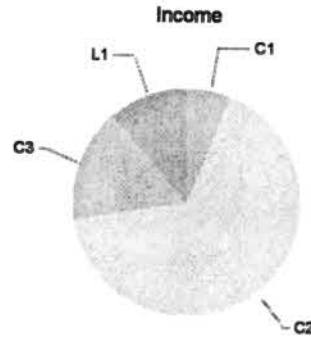
Committees

Statistics

Top 10

Filer Name: Andy Tobin for AZ Corp Commission		Status: Active	Last Reported: 1/15/2017
Candidate Name: TOBIN, ANDREW M	Office Sought: Corporation Commissioner	Party: Republican	Year: 2016

Income for period 11/25/2014 to 11/8/2016	Amount
Personal and Family Contributions (C1)	\$3,700.00
Individual Contributions (C2)	\$40,407.00
Contributions from Political Committees (C3)	\$9,750.00
Business Contributions (C4)	\$0.00
Small Contributions (C5)	\$0.00
CCEC Funding (C6)	\$0.00
Qualifying Contributions (C7)	\$0.00
Loans Made to this Committee (L1)	\$7,000.16
Other Receipts Incl. Interest & Dividends (R1)	\$0.00
Transfers from Other Committees (T1)	\$0.00
Cash Surplus from Previous Committee (S1)	\$0.00
Total Income	\$60,860.16



■ Personal and Family Contributions (C1) ■ Individual Contributions (C2)
■ Contributions from Political Committees (C3) ■ Loans Made to this Committee (L1)

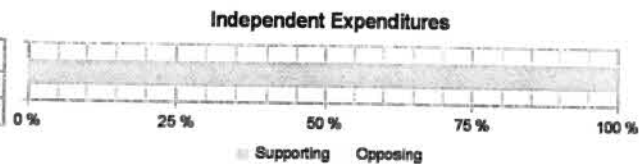
Expenditures for period 11/25/2014 to 11/8/2016	Amount
Operating Expenses (E1)	\$54,996.12
Independent Expenditures (E2)	\$0.00
Contributions to Other Committees (E3)	\$0.00
Other Expenses (E4)	\$0.00
Transfers to other Committees (T1)	\$701.85
Loans Made by This Committee (L2)	\$0.00
Expenditure of In-Kind Contributions (C8)	\$0.00
Disposal of Surplus Cash (S1)	\$0.00
Total Expenditures	\$55,697.97
Bill Payments for Previous Expenditures (D1)	\$0.00
Total Disbursed	\$55,697.97



■ Operating Expenses (E1) ■ Transfers to other Committees (T1)

Cash Balance as of 11/8/2016	\$5,162.19
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Independent Expenditures for 16	Amount
Supporting Candidate	\$1,432,343.00
Opposing Candidate	\$0.00



Reports Filed

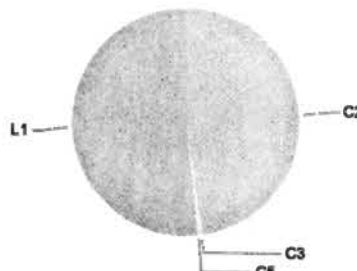
2016 Summary >>

EXHIBIT R

Filer Name: Boyd Dunn 2016	More >>	Status: Active	Last Reported: 1/15/2017
Candidate Name: DUNN, BOYD	Office Sought: Corporation Commissioner	Party: Republican	Year: 2016

Income for period 11/25/2014 to 11/8/2016	Amount
Personal and Family Contributions (C1)	\$0.00
Individual Contributions (C2)	\$63,850.00
Contributions from Political Committees (C3)	\$1,250.00
Business Contributions (C4)	\$0.00
Small Contributions (C5)	\$25.00
CCEC Funding (C6)	\$0.00
Qualifying Contributions (C7)	\$0.00
Loans Made to this Committee (L1)	\$70,000.00
Other Receipts Incl. Interest & Dividends (R1)	\$0.00
Transfers from Other Committees (T1)	\$0.00
Cash Surplus from Previous Committee (S1)	\$0.00
Total Income	\$135,125.00

Income



■ Individual Contributions (C2) ■ Contributions from Political Committees (C3)
■ Small Contributions (C5) ■ Loans Made to this Committee (L1)

Expenditures for period 11/25/2014 to 11/8/2016	Amount
Operating Expenses (E1)	\$128,096.76
Independent Expenditures (E2)	\$0.00
Contributions to Other Committees (E3)	\$0.00
Other Expenses (E4)	\$0.00
Transfers to other Committees (T1)	\$0.00
Loans Made by This Committee (L2)	\$0.00
Expenditure of In-Kind Contributions (C8)	\$0.00
Disposal of Surplus Cash (S1)	\$0.00
Total Expenditures	\$128,096.76
Bill Payments for Previous Expenditures (D1)	\$0.00
Total Disbursed	\$128,096.76

Expenditures

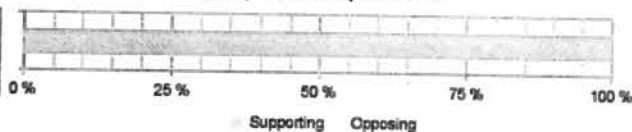


■ Operating Expenses (E1)

Cash Balance as of 11/8/2016	\$7,028.24
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Independent Expenditures for to	Amount
Supporting Candidate	\$1,432,343.00
Opposing Candidate	\$0.00

Independent Expenditures



[Reports Filed](#)

[2018 Summary >>](#)